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Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 312

HARRY R. SWANSON, AS SECRETARY OF STATE
OF NEBRASKA, ET AL., APPELLANTS,

vs.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT
OF THE AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEBRASKA

FILED AUGUST 6, 1940.

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[fol. 957] DEPOSITION OF IRVING CAESAR

[fol. 958] IRVING CAESAR, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich: .

Q. What is your full name and residence?

A. Irving Caesar, and I live at Park Central Hotel, 55th Street and Seventh Avenue.

Q. New York City?

A. Yes.

Q. What is your occupation?

A. I write songs; song writer; publisher.

Q. How long have you been a song writer?

A. About twenty years; nineteen years.

Q. You write the words?

A. I write the words.

Q. Sometimes you write the music?

A. Sometimes I write the music; in a few cases I write my own music.

Q. I show you a list of compositions that have been compiled, purporting to be a list of your songs, and ask you if that as a true and accurate list of those compositions? (Paper handed to the witness.)

A. It is a true and accurate list but it can't be complete; [fol. 959] there may be some songs that are not down.

Q. So far as you know it is true?

A. So far as I know it is true and accurate.

Mr. Frohlich: I offer it in evidence.

(The paper just offered in evidence was marked Plaintiffs' Exhibit No. 13, of this date.)

Q. Mr. Caesar, you have had your compositions published by various publishers from time to time?

A. Yes.

Q. When did you join the American Society of Composers, Authors and Publishers? What year?

A. I think in 1923; I am not sure; you can look it up. I think it was 1923. I would like to know myself.

Q. I show you this contract, this document purporting to be a contract, dated July 18, 1935, and ask you if that is

your signature and if you recognize the other signature on it (handing paper to the witness)?

A. That is my signature.

Mr. Frohlich: I offer it in evidence and ask that a photostatic copy thereof may be substituted and marked in place of the original.

(The document just offered in evidence was marked Plaintiffs' Exhibit No. 14, of this date.)

[fol. 960] Q. Prior to the time you joined the Society, had you ever received any money for the public performance for profit of any of your compositions?

A. No, sir.

Q. After you joined the Society did you receive any money for the public performance for profit of any of your compositions?

A. Not immediately after; there was no distribution; the income of the Society was insufficient to make any distribution.

Q. Did a time come when you did receive such moneys from the Society?

A. Yes, the time did come.

Q. Have you been receiving money from the Society each year?

A. Each year, in quarterly payments.

Q. Did some of the compositions composed by you, which appear on this Plaintiffs' Exhibit 13, attain popularity?

A. Yes.

Q. Can you tell us which of them became very popular; mention a few of them?

A. "Swanee," "I Want To Be Happy," "Tea for Two," "Just A Gigolo," "Crazy Living," "Lady Play Your Mandolin," "Is It True What They Say About Dixie," "That Is What I Want For Christmas." Is that [fol. 961] enough?

Q. That is enough. Did some of those compositions you have just mentioned sell as much as a million copies?

A. I don't know. I think that two may have. I would have to look at my royalty statements, if I could find them.

Q. Can you tell us offhand from memory how many copies of sheet music were sold of these compositions?

A. In total?

Q. Yes. Just take any one particular composition; take "Swanee"; how many were sold of that?

A. I would say maybe 500,000. Say, Mr. Frohlich, in those days a song sold over a period of a year or a year and a half and maybe the first statement might have been for 400,000 and in the second statement for 200,000, and then drop down to 50,000. If a song has the same life today as—as I say, I would have to get the accumulated statements covering at least eighteen months' period to give you the number. Let me expand on that. I mentioned "Is It True What They Say About Dixie," that is a song I also published, and there I am a little more acquainted with the figures and am certain of them. That sold almost exactly 180,000 copies and about 20,000 orchestrations. That sale was concentrated in a very short period, in about 120 days I would say.

[fol. 962] Q. Going back to the earlier years, 1922, 1923, 1925, when a song became popular how long did it remain popular?

A. It remained popular anywhere from nine months to as many as twenty-one months.

Q. Which is the most recent popular song you have had?

A. The most recent popular hit I had was, "Is It True What They Say About Dixie."

Q. How long did that remain popular?

A. As I said, about from the time that it was first played until its last sale of say 100 copies in any one week, which of course is no sale at all—I would say 120 days. I would give it 120 days, four months, and that is a long time. ♪

Q. What do you mean by a "hit"; what is your definition of a "hit"?

A. My definition of a hit is a song that not only is most frequently heard but is accompanied by sales. In other words, where the song creates a will to be purchased, which translates itself into music sales; that to me is a real hit.

Q. What was the average number of copies of a hit song away back in 1932?

A. A real hit?

Mr. Nye: Objected to as having no foundation for knowledge.

Q. Yes.

[fol. 963] A. A real hit might sell up to five million. I want to qualify that. "Suwanee" having sold only 600,000 copies, I want to qualify that as well; it was due to the fact that "Suwanee" was published by a house that did not deal

with out and out popular songs; whereas the average popular song sold to the public for twenty-five cents, "Suwanee" sold for 35 and also wholesaled for five or six cents above the average popular song; otherwise I think "Suwanee" might have sold two or three million copies.

Q. How many are sold in a real hit now?

A. I had a real hit in "Dixie." I don't know what the other publishers say, but that was a real hit; I know it. The records show it. They made a research and resume. I would say a real big hit might sell 200,000 copies, in spite of anything you hear. Of course, they force a sale to 250,000 or 280,000, but you can't always believe it.

Q. On these compositions you published you have your renewal rights?

A. You mean copyright renewal rights? Certainly, I had the renewal rights as creator, not as publisher.

Q. Have you renewed any of the compositions as yet?

A. I am not that old. I can't renew them for 28 years.

Q. When the original terms of copyright on these compositions expire, do you propose and intend to renew them? [fol. 964] A. I certainly do.

Q. Do you expect to make arrangements with publishers for the publication of these renewal copyrights from time to time as they come along?

A. I do.

Q. Do you expect to receive royalties either by way of advance royalties or other arrangements on these compositions when they are renewed?

A. Yes, I do, and I also expect to receive a bonus, because they have proven themselves to have value.

Q. Taking all these compositions, in order to save time, taking the compositions as a unit, what do you estimate to be the value of the renewal right to yourself in these compositions?

Mr. Nye: I object to the question, no proper foundation, speculation, an undetermined time not in evidence.

A. I would say this, that I doubt whether I would make a deal for the renewal rights for the simple reason I know these songs, many of them, have proven themselves to be assets to any well-balanced entertainment program and that as long as they continue to be so I can receive an income for their use.

[fol. 965] Mr. Nye: I move to strike out the answer as not responsive.

A. (Continued:) If I sold the renewal rights I might lose the money; I consider the songs better than money.

Mr. Nye: I move to strike out the answer as not responsive, a voluntary statement of the witness.

Q. If you did not sell the renewal rights, what would you do with the renewal rights?

Mr. Nye: Objected to as calling for speculation.

A. I would either arrange for a publisher to exploit them as a publisher does, or perhaps renew them for my own publishing company, I suppose.

Q. Have you your own publishing company?

A. Yes.

Q. You publish musical compositions at the present time?

A. Publish all my own compositions.

Q. Now, take a song like "Suwanee", when your time comes to renew that composition would you make a deal with a publisher for advance royalty on it?

Mr. Nye: Objected to as calling for a speculation at an undetermined time.

[fol. 966] A. I would expect to make a deal for advance royalty and in some cases a bonus.

Q. What is the average advance royalty paid today?

A. That depends on the importance of the composition.

Mr. Nye: Same objection.

Q. Take a composition that sold 600,000, do you know any composition that has been renewed in the last year or two that sold 600,000?

A. Yes; "Chinatown My Chinatown," one of Jean Schwartz's, or "Bedelia" or "Mr. Dooley"; I don't know what he got for that; I know he got a substantial drawing account covering several years.

Q. What did you get by way of royalties from "Suwanee", approximately?

Mr. Nye: Objected to as immaterial.

A. I would say that "Suwanee" might have been \$20,000; I don't know; it is sixteen or seventeen years ago.

Q. Do you expect to get as much as \$20,000 out of all your compositions when they are renewed, in the aggregate?

Mr. Nye: Objected to as speculative.

A. I wouldn't sell my rights for \$20,000 in "Tea For Two".

Q. That is the one you wrote with Mr. Youmans?

A. Yes.

Q. Did it attain popularity?

[fol. 967] A. It is still one of the top songs of the country. That is a song that is being played without any exploitation back of it.

Q. What value do you place on that song for renewal rights, so far as advance royalties are concerned?

Mr. Nye: Same objection.

A. Without even speculating, I think I could get \$20,000 from any publisher just for the renewal rights. As a matter of fact, as a publisher myself I would pay \$20,000 to the present publisher if he would transfer the right to me.

Q. You have come in contact with a great many writers and composers in the great many years you have been in the business?

A. Yes, I know all of them.

Q. Do you know the publishers, too?

A. Yes, most of them; yes.

Q. Have you general familiarity with the music business?

A. Yes.

Q. Both with the composing end of it and the publishing end of it?

A. Yes. As you know, I am President of the Song Writers Protective Association.

Q. How long have you been such President?

A. Two years, almost two years.

[fol. 968] Q. Are you familiar with the prices of renewals in the business, the royalties that are paid?

A. Sure.

Q. Do you know what writers and composers receive from their publishers as a general rule for popular music?

A. As a general rule.

Q. With your knowledge and experience in this business what would you say you could obtain for the renewal rights of all of your compositions?

Mr. Nye: Objected to as calling for speculation, no proper and sufficient foundation laid for knowledge, and immaterial.

A. I will tell you what I figure. I would say, about—for all my compositions? \$100,000, minimum. I wouldn't sell them. It is only \$4,000 at four per cent; I wouldn't sell them. I consider my songs like something I have saved, like a piece of land I have bought. I wouldn't sell them.

Mr. Nye: You don't want the reporter to take down all this sort of side remarks?

Mr. Frohlich: That is part of the answer.

Mr. Nye: I move to strike out all of the answer except "\$100,000", as volunteered by the witness.

A. Frankly, I don't think that is fair, because frankly [fol. 969] that is how I would consider them.

(Discussion off the record.)

Q. In any of the contracts that you made for the publication of your compositions, was there any provision in any of the contracts with any of the publishers for you to receive compensation for the public performance for profit of the composition?

A. Yes, in every contract. The contract is predicated on the proposition that I am a member of the American Society of Composers, Authors and Publishers, and that therefore I was entitled to receive my pro rata share of the reward that accrued to ASCAP for the public performance of my songs.

Q. Aside from that, was there any covenant on the part of any publisher at any time to pay you anything for the public performance for profit of your compositions?

A. No.

Q. From time to time your compositions were licensed to producers of records and mechanical rolls?

A. That is right.

Q. For mechanical reproduction?

A. That is right.

Q. Do you from time to time receive compensation for such, from your publisher?

[fol. 970] A. Yes.

Q. If you were not in combination with any other member of ASCAP, if you were acting alone, could you determine

and fix the price to be charged for the use or rendition of your musical compositions, your copyrighted musical compositions sold in the State of Nebraska, for all uses and purposes?

Mr. Nye: Objected to as calling for conclusion and speculation.

A. I could not, not even in the City of New York.

Q. Could you determine and fix the price to be charged for the public performance for profit of any of your compositions within the State of Nebraska?

Mr. Nye: Same objection.

A. No.

Q. For you to fix and determine the price to be charged for the public performance for profit of any of your compositions in the State of Nebraska would you have to take into consideration various elements that were germane to that problem?

Mr. Nye: Same objection.

A. Yes, of course I would.

Mr. Nye: I move to strike out the answer, except the word "Yes".

[fol. 971] Q. What would you have to consider in determining and fixing the price?

Mr. Nye: Same objection.

A. In the first place, the use to which it would be made. I suppose, the population in the State, the number of people to whom the music would be accessible at any time through any one source—as many factors as enter into making up a ratio.

Q. Would the size of an establishment have some bearing on it?

A. Yes, absolutely.

Q. Would these factors vary from time to time?

Mr. Nye: Same objection.

A. Naturally.

Q. Assuming that there are 367 places of entertainment in the State of Nebraska in which copyrighted musical com-

positions are used, how would you go about determining and fixing a price on these establishments?

Mr. Nye: Objected to as calling for speculation; improper in form.

A. If a hotel in Lincoln, for instance, used music to entertain its patrons, so that they could dance to it, and I thought that the music were an asset in bringing people in, that would possibly make me charge X, let us say. If, on the [fol. 972] other hand, it was music that was being used in a more modest way in some little hotel where the guests just sat around the lobby and they wanted to have a little three-piece orchestra so that they could while the hours away before going to bed, I would charge a quarter of X.

Q. Would you be in a position to go down personally to the State of Nebraska to look over these establishments for the purpose of obtaining information?

Mr. Nye: Same objection to that.

A. Naturally not.

Mr. Nye: Objected to as calling for speculation.

Q. Would you have to employ somebody for that purpose?

Mr. Nye: Same objection.

A. I couldn't afford to.

Q. Could you afford to have somebody in the State of Nebraska to keep an eye on your compositions?

Mr. Nye: Same objection.

A. Not efficiently.

Q. Could you afford to have attorneys in the State of Nebraska to represent you in infringement suits for infringements in the State of Nebraska?

Mr. Nye: Same objection.

A. No.

[fol. 973] Q. Could you estimate what it would cost you?

Mr. Nye: Objected to as speculation, no foundation as to knowledge.

A. It is obvious it would be an uneconomic procedure.

Q. Have you any idea what it would cost you to do it?

Mr. Nye: Same objection.

A. I have an idea. I am a music publisher.

Q. Give us the idea.

Mr. Nye: I object to the idea.

A. The least I could do it for would be, say, \$5,000. There I am allowing for only one personal contact with my representative in the course of a year and a minimum wage for my representative of \$30 a week.

Q. You employ people in the music publishing business?

A. Yes.

Q. Pay them a salary?

A. I do.

Q. What would you have to pay to a man skilled in music, able to go around among the establishments and detect infringements?

Mr. Nye: Objected to; no foundation.

A. The minimum, I mean a very modest price even in New York, I would have to pay him \$60 a week to travel around, and that would bring it up to \$3,000 a year and allows no [fol. 974] money for telegraphing or contacting him at least once or twice a week.

Q. Would you need a man of that type out there?

A. Certainly.

Q. How much would you have to pay a lawyer to protect your interests out there?

Mr. Nye: Objected to; no foundation.

A. I don't know how high you would have to go in Nebraska.

Q. Suppose you could determine and fix the price to be charged and had all the information available, would you be able to do that with reference to all uses and purposes of your compositions?

Mr. Nye: Same objection.

A. You could not, for a very good reason.

Mr. Nye: I move to strike out the answer as argumentative.

Q. Will you explain why you can't do it?

Mr. Nye: I object to the question as calling for speculation.

A. Let us say that I have a song that I release to the public tomorrow and spontaneously it becomes a hit, strikes a responsive chord throughout the nation, as some songs do; that song obviously has a greater value for public performance than a song that does not attain that same spontaneous reaction. The life of a song being so short, by the time I ascertained how valuable that song was to the user the song would be dead.

Q. Can you at the present time determine and fix any price for television use of the composition?

Mr. Nye: That is objected to as highly speculative.

A. No, I cannot.

Q. Have you any information or data that would enable you to determine at the present time what price you should charge a user in the State of Nebraska of your composition, for twenty-eight years of the copyright and the twenty-eight years of renewal, on television?

Mr. Nye: Same objection.

A. No.

Mr. Nye: No foundation being laid of any knowledge on the part of the witness.

A. (Continued:) It is impossible. There is no information available. I just talked to the inventor of television, Vorkin, at Philadelphia; I just talked to him. He is just as much in the air as I am. That man is responsible for television.

Q. Have you any control, or can you tell the manufacturer of a mechanical record or music roll of any of your [fol. 976] compositions to fix a price for public performance for profit of any of your compositions in the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion.

A. I have no control.

Q. And if a manufacturer of such roll or record should sell a roll or record in the State of Nebraska and fix a price on it, could you compel him in any way to give you a part of it?

Mr. Nye: Same objection.

A. I don't see how.

Q. Are you willing to have any manufacturer of music rolls or records acting as your agent or acting in your interest and behalf in fixing and determining the price to be charged for public performance for profit in the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion.

A. I am not.

Q. Have you any control over the manufacturer of records and rolls of your compositions?

Mr. Nye: Objected to as calling for a conclusion; not the best evidence.

[fol. 977] A. Have I any control?

Q. Any control whatever?

Mr. Nye: Same objection.

A. You mean, after he has manufactured them?

Q. After *has* has manufactured them.

A. No. As a matter of fact I don't let them any more.

Q. Have you any control over any of these manufacturers of music rolls and records in any respect whatever once they manufacture your compositions?

Mr. Nye: Same objection.

A. No, sir.

Q. What have you received from the Society in 1936 by way of royalties?

A. In 1936?

Q. Yes.

A. Well, I would say approximately—do you mean from America?

Q. Just from the distribution of the American music.

A. I would say in the neighborhood of sixteen or seventeen thousand dollars; I think \$16,000.

Q. What did you get in 1937?

A. Somewhere in that neighborhood. The figures are available. I am sure you can get them.

Q. What did you get in 1935?

[fol. 978] A. Maybe around 13-5. I am guessing, but as I say you can get that from the Society. It is O. K. with

me. I am willing to stand corrected according to the figures.

Q. Has your contract with the Society a value?

A. It has a value to me.

Q. What do you value it at?

A. Well, it is not transferable, so in dollars and cents it has no value to me, but I value it as my professional existence. I don't know. I can't put a price on it inasmuch as I cannot sell it. I cannot transfer it.

Q. Can you place any monetary value on it?

A. Oh, yes.

Mr. Nye: Objected to; no foundation of knowledge of the witness.

A. (Continued:) If an agency were to come along with a guaranty to do the same efficient service for me as the Society does, I don't see how I could keep from placing a value of say at least 7500 or \$10,000 or even more. It may very well be that without such a satisfactory agency instead of receiving any moneys I might receive such an intangible sum that it would be easy for anyone to exact almost any terms for the service of collecting on a national basis.

Mr. Nye: I move to strike out the answer as not relevant [fol. 979] responsive.

Q. Are you willing to have your contract with the Society declared invalid and unlawful?

Mr. Nye: Objected to as speculative, immaterial.

A. Naturally not.

Q. Is that contract between you and the American Society necessary to your continued existence as a composer and writer?

Mr. Nye: Objected to as calling for a conclusion.

A. It is of the very essence.

Q. Is the Society doing something for you that you cannot do for yourself?

Mr. Nye: Objected to as calling for a conclusion.

A. Absolutely.

Q. Have you ever written or composed any compositions that were used in productions, stage productions?

A. Many, many.

Q. Can you give us a few of such productions?

A. Well "Tea For Two," and "I Want To Be Happy" came out of "No, No, Nanette," which was a show I supplied the lyrics for; all my songs in "Greenwich Village [fol. 980] Follies" some years back, or lately "The White Horse Inn" at the Center Theatre.

Q. What compositions were there in "The White Horse Inn"?

A. There were many.

Q. Can you recall one or two?

A. "In the White Horse Inn", "I Cannot Live Without Your Love."

Q. Did you restrict any of those compositions that appeared in such productions?

A. Restrict them in what manner?

Q. Did you restrict them in any way, the use of your compositions from public performance for profit, for any period?

A. Not that I recall. Not being the publisher of "White Horse Inn" I wouldn't be as familiar with the restrictions on that score as the publisher; he would be; but I would have a general knowledge, and to my best knowledge I don't believe the compositions were restricted.

Q. You are a member of the board of directors of ASCAP?

A. Yes.

Q. As a member of the Board, did you at any time have any negotiations with persons representing the Hotel Men's [fol. 981] Association?

A. Not directly. We discussed it.

Q. Did you have any negotiations with any member of the Motion Picture Exhibitors?

A. Not directly.

Q. Did you have any negotiations with any representatives of the Radio Users Association or Radio Broadcasters?

A. With regard to rates?

Q. With regard to rates.

A. Not directly.

Q. Do you know whether there was discussion between the members of the board of ASCAP and representatives of the Hotel Men's Association and the Motion Picture Exhibitors Association from time to time with regard to rates?

Mr. Nye: Same objection.

A. Yes, to the best of my knowledge there was.

Q. Did this come up at meetings of the board of directors at which you were present?

A. Yes.

Q. Were they discussed?

A. Yes.

Q. Were there committees appointed from time to time?

A. Yes.

[fol. 982] Q. Did you discuss the reports of these committees from time to time as they came up?

A. Yes.

Mr. Nye: I object to that as self-serving and not the best evidence.

Q. I show you a contract that is in evidence here between Irving Berlin, Inc. and Truman Tomlin, Coy Poe and Jimmy Grier as Plaintiffs' Exhibit 3, and ask you whether you have seen similar contracts with other publishers and whether you have entered into contracts of that kind (handing paper to the witness).

A. Yes, I have.

Q. Is that contract referred to by any special name?

A. Standard Popular Song Writers' Contract.

Q. Is that a form of contract that is very much in use now in the business?

A. Yes.

Q. Particularly with popular song writers and publishers?

A. Yes, it is standard.

Q. Mr. Caesar, I want to read you a sentence from the statute and then ask you some questions on it.

A. What statute?

Q. The statute of Nebraska which is the subject of this [fol. 983] lawsuit. (reading Section 2, subdivision "(A)" of Legislative Bill No. 478) Now, is it possible for you to have affixed or to affix to any of the musical compositions composed by you and now sold within the State of Nebraska, a price for all uses and purposes?

Mr. Nye: I object to that as leading and suggestive, I object to it further as calling for speculation.

Q. Is it possible for you to do this on the compositions by you heretofore published?

Mr. Nye: Same objection.

A. Heretofore published?

Q. Yes.

A. Absolutely impossible. The cost of sending all my copyrights back to the press to have my imprint on would just prohibit me from selling any music in the State.

Q. A lot of your compositions have been sold in the State of Nebraska to dealers and jobbers in that State?

A. Yes.

Q. They are now in their possession?

A. Yes.

Q. Can you compel any of these dealers and jobbers to send back to you those copies?

A. No, I could not.

[fol. 984] Q. Take now compositions to be published in the future, is there any way in which you could yourself determine and fix a price for all uses and purposes under this statute of your musical compositions within this State?

Mr. Nye: Objected to as calling for speculation.

A. I answered that before; there is no way.

Mr. Frohlich: You may examine.

Cross-examination.

By Mr. Hotz:

Q. Do you also get money from ASCAP as a publisher?

A. Yes, I get an insignificant sum, because I am a very young publisher.

Q. Are you a publisher member or are you a writer?

A. I am a writer member.

Q. You are not a musician?

A. I am not a tutored musician; I am an ear musician.

Q. Do you write music?

A. Occasionally.

Q. Have you had any published?

A. A ballad, "If I Forget You", I wrote the words and music.

Q. But the greatest part of your works on this exhibit here shows you to be a writer of lyrics, is that right?

[fol. 985] A. Yes, I am a writer of lyrics.

Q. You choose different composers or they choose you, that write music, and then you put it to words, is that right?

A. Yes, we work in various ways. I mean, a fellow might have a good tune—you see, a melody is a half-expressed thought, and so the lyric writer comes along and tries to tell the melody writer what he *what he* said, in words; and vice versa. So you work various ways.

Q. Do you know the numbers of the copies of sheet music upon which you have written the words, that are copyrighted, that have been sold in the State of Nebraska?

A. I have no idea.

Q. You have no idea?

A. I have no idea, but I would say I hope it is in proportion to the population of the country; I hope I am as popular in Nebraska as elsewhere.

Q. When you are paid by ASCAP it is usually on the basis that has been adopted by the board, showing the number of pieces of music that have been put out?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

Q. Is it not? It is one of the things taken into consideration, the number of pieces published and sold?

[fol. 986] A. Not the number of pieces; that would mean nothing. There are thousands of sheets that I wouldn't give you a nickel for. That is not the consideration at all.

Q. What is the consideration?

A. The vogue and popularity of the music. Let me expatiate for a moment. It might be more important to me in the State of Nebraska if there was some artist who would make the best impression by singing one of my songs; say that I sent to the State of Nebraska a thousand fresh songs and no artist would be interested in one of them.

Q. Do all the pieces of music that you write words for have the same value, or are some better than others?

A. Some are better than others.

Q. The reason is because they have a popular appeal and the people like them better?

A. Yes, but you can't tell which are better until you find out whether the people like them.

Q. You say that you belonged to ASCAP for a number of years before you got anything at all from them?

A. I didn't say that; I said I belonged a number of years before the Society had anything to give me.

Q. Under your membership in that Society that you originally had you received no compensation from the

American Society of Composers, Authors and Publishers [fol. 987] for quite a while, did you?

A. Because the Society was not sufficiently well organized to—

Q. Have you been a member right along?

Mr. Finkelstein: Let him answer.

A. Because the Society was not sufficiently well organized to go into these various states and solicit contracts with the users of my music; but when they were sufficiently well organized then it reflected itself in income.

Q. Have you got a copy of the articles of association?

Mr. Finkelstein: Do you want to offer it in evidence?

Mr. Hotz: I want to ask a few questions about that.

Mr. Finkelstein: I will get a copy for you if you want to offer it in evidence.

Q. You have never studied the Nebraska act or read it, except the one section that was quoted?

A. I have read it, but like all laymen its meaning is vague. I don't mean any reflection on the Nebraska act.

Q. In the articles of incorporation—

Mr. Finkelstein: Article of association, Mr. Hotz.

Q. (Continued)—of the American Society of Composers, [fol. 988] Authors and Publishers, they have a clause I want to call your attention to. Here it is, Exhibit D attached to the bill of complaint filed in this action, on page 55; under, I think it is headed, "Application for Membership," under "Composers and Authors", of which you would be one, it states as follows: "Any composer and/or author of musical works who regularly practices the profession of writing music and/or the text or lyrics of musical works, and who shall have had not less than five works of his composition or writing regularly published, shall be eligible to membership in this class." I will have to pass this for the time being. The thing that I am trying to find—

Mr. Nye: Scratch out the question.

Q. What is the non-participating membership? That is what I am trying to find out.

A. The non-participating class is the one in which a writer is placed when in the estimate of the board it looks as though he is a writer. Of course, you know there are

millions of people who think they can write songs and sometimes they get under the line and get five or six songs published. Very often a man is elected to the non-participating class and at the same meeting his activities since his application and since he presented his first five songs having [fol. 989] made itself felt, he is immediately elected into a participating class.

Q. That is, by the board of directors?

A. Yes. If in looking over his catalogue they see that his catalogue is active.

Q. He is required, when he becomes a full pledged member, to assign the public performance rights of his works to the Society?

A. Yes. Let's say you have a nephew and he writes songs and he knows me very well and I like him and I succeed in publishing five songs for him over a year. I take these songs to the Society and say that I published them.

Q. The Society has the fixing of the public performance rights, that is, the price that the user pays for the use of those songs, the American Society of Composers, Authors and Publishers, that is, the directors?

A. They don't fix any price on them.

Q. They fix the price that the user pays for the public performance rights on the catalogue of ASCAP?

A. On the repertoire of ASCAP. I don't know whether you want this on the record. Suppose the New York Public Library were a private institution and the citizens of the City of New York got together and said, "Why can't these millions of books be accessible to us?" The City said, "In [fol. 990] order to pay for this thing we will have to tax you a little; we will have to put a five cent tax on this privilege." But the citizens might say, "That is too much. What part of the five cents is for Dickens' works and what part is for someone else's works?" The City of New York couldn't answer that. The City would simply say, "Here are millions of works; they will all be accessible to you for five cents." That would be a proper way of going about it. It wouldn't work. It wouldn't be pragmatic. It might be an ideal way of doing it, but it wouldn't work.

Q. Are you a member of the membership committee of ASCAP?

A. Not membership committee.

Q. Are you the member of any committee?

A. Rules committee, administrative, on many committees. I am too busy right now.

Q. You have been actively engaged in the affairs of ASCAP for about how long?

A. I think I have been a member of the board now for about twelve years. I don't know how long. You could find out.

Q. Who are the members of the Membership Committee of your organization?

[fol. 991] A. Joe Young is on the membership committee for one. I believe Will Von Tilzer is on the membership committee. He is a publisher. Joe Young is a writer. I am not sure if Walter Fischer is a member of the membership committee. He may be. I think there are five or six, almost evenly divided between writers and composers.

Q. What is the duty of the membership committee?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. It is their duty to look into an applicant's qualifications, either as a writer or a publisher.

Q. Do you know the highest amount that is paid to any composer or writer?

A. Anybody in the AA class. I get as much as anybody.

Q. Do you think that \$16,000 is about the top?

A. For composer or author, in that neighborhood, yes. If you ascertain what the AA class has received for the last year or two that would be the highest amount.

Q. How many classes?

A. AAA, BBB—

Q. How much does each class pay?

A. Pro rata to the importance of the contribution of each class.

Q. All in the same class receive the same amount?

[fol. 992] A. Yes. I was just going to tell you. Pro rata of the contribution of that class in each group of work, divided by the number of men who qualify to be in any one class. That is as particularly as I can put it.

Q. The fewer men there are in it the greater the division of profits for that class?

A. Yes, it would work out that way. There is no reason why it shouldn't.

Q. Give those classes and the amounts in each class.

A. I couldn't tell you that off hand. You mean, in the last distribution?

Q. You are a member of the board of directors and you naturally must know what the classes are.

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. They vary every quarter.

Q. What are they?

A. AAA, BBB, CCC, DDD, Class 1, Class 2, Class 3, Class 4—you can get it; there is no reason you can't get it.

Q. How many classifications are there for the authors and composers?

A. How many classifications are there? Thirteen.

Q. About thirteen classes?

A. Yes.

[fol. 993] Q. And they range from nothing up to \$16,000?

A. The only class that gets nothing, I don't call that a class, because they are non-participating members, but starting from Class A-4 they get very little and in my opinion should get less.

Q. How much do they get?

A. They probably get ten dollars a quarter.

Q. And their dues are ten dollars?

A. No, their dues are ten dollars a year; they get ten dollars a quarter, that is \$40 a year. We are paying that as a nuisance value. I say that as President of the Song Writers.

Q. The class in which \$16,000 is paid, that is the highest class?

A. Yes.

Q. What do you call that?

A. AA.

Q. How many members in that class?

A. I want to qualify a little. There are permanent A and permanent B and permanent C.

Q. Are you in permanent A?

A. To become permanent you must have become inactive, but you must have made sufficient contributions so that in case of your death or incapacity there is a logical reason [fol. 994] why, due to the fact that your numbers still have a vogue in popularity and are accessible to the user, you should be compensated for it.

Q. Can you answer the question, how many members there are in the class to which you belong?

A. Yes.

Q. How many?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. Approximately I would say there must be fifty-five men. I don't know.

Q. Going on down the list, in the next class could you give us an idea of that?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I doubt whether I know. You could get them.

Q. How much is the next class below you paid per year?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I don't remember, speaking for myself; and I see no reason why you should not get the facts, if you want them. There are no secrets in the Society.

Q. What class does Gene Buck belong to?

A. I don't know. I am not going to trust my memory. [fol. 995] Q. He is in your class, isn't he?

A. No, he is in B or BB. I don't see why you shouldn't have all this in the record.

Q. Who fixes the salaries of the officers?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. The board of directors.

Q. Who elects the board of directors?

A. The board of directors are elected this way: The publishers have the right to put up twelve men and the writers have the right to put up twelve men—I mean, that is how it is constituted. There are four men elected for one year—I mean to say, they are not elected; we might put up two or three candidates; four men for two years—

Q. The board itself chooses them?

A. Yes, the board does. You would have to do that, because otherwise Class 4, being the most numerous, might give us a board of directors of Class 4 mentalities.

Q. And Class 4, I presume that is one of the lower classes, the lowest?

A. Lower than a whale's belly.

Q. And that is the class that constitutes, I suppose, a majority of the composer and author groups?

[fol. 996] A. Numerically, yes.

Q. What percentage would you say it was of the total?

A. I don't know. You can get the membership list and get all that information, and calculate it.

Q. From ASCAP?

A. Yes, I am sure there is no objection to that.

Q. You have no way of telling us how much money you derived for public performance rights of your works in the State of Nebraska?

A. No.

Q. Does the Association keep any records by States to show?

A. Income from the various states?

Q. No, not income from the various States, but the individual use of your productions in the State of Nebraska.

A. I don't think so. They might have a survey; sort of take a cross-section occasionally. It wouldn't be in the cards; it wouldn't be an economical process. I go back to my New York Public Library example.

Q. You could tell, could you not, the number of your compositions that are sold in the State of Nebraska; there would be a place of finding that out, from your publishing house?

A. The number of sheets of music sold?

[fol. 997] Q. Yes.

A. Nobody could break down his records.

Q. How many he sold and what they were?

A. He couldn't, for this reason—he could if he sold direct, but songs must be sold through jobbers.

Q. He could tell what he sold to jobbers for Nebraska?

A. No. How could he tell us that?

Q. By going to the jobber.

A. The jobbers don't keep their accounts that way.

Q. There are records kept of the total number of copyrighted musical compositions that are produced and printed?

A. If you will permit me, I will tell you how it is done.

Q. There are, are there not?

A. Of the total number?

Q. Your printer tells you the number you have ordered?

A. Yes, but that doesn't help us. The salesman represent-

ing the music jobber goes into the State of Nebraska and he calls on a music store; the music store says, I want six of this and four of this and two of that, and so on down the line. He sends the order in to his jobber and the jobber sends to that music store a shipment of music. Now, then, when he bills them he probably bills them for twenty-six [fol. 998] copies of sheet music at 18 or 21 or 28 cents a copy. Now, if you want a jobber to break that down for the publisher and the publisher to break figures down, it couldn't be done. If they would, they would have to charge sixty cents a copy, because the bookkeeping would make it too high for the service rendered. Anything can be done. If you are willing to pay me \$25 for a sheet of music, I will have you gentlemen represent me in the State of Nebraska.

Q. You have never attempted to figure out whether you could have your public performance rights paid to you right on the spot?

A. I have attempted to figure it out and every time I figured it out I am better satisfied the way I am. Of course, I have attempted to figure it out. It is my business to make as much as I can.

Re-direct examination.

By Mr. Frohlich:

Q. Would you be willing to permit the publishers of your musical compositions to fix and determine the price for the public performance of your copyrighted musical compositions?

Mr. Nye: I object to that as calling for speculation.

A. No.

[fol. 999] Q. You are the President of the Song Writers Protective Association?

A. Yes.

Q. That is composed of what?

A. That is composed of lyric writers and composers.

Mr. Nye: I object to this line of testimony as immaterial.

Q. Have you discussed with these men the question of public performance for profit?

Mr. Nye: I object to the question as laying the foundation for hearsay.

A. We discuss everything pertaining to the music business, naturally.

Q. What is the consensus with regard to permitting publishers to fix the price for public performance for profit of these compositions?

Mr. Nye: Objected to as hearsay, calling for speculation; improper in form.

A. It is not speculative because there is a suit pending now to take away from the publishers the right to fix the price on fine records, so if the writers have decided not to let them fix the price on records imagine what they would do about fixing the price for public performance rights.

[fol. 1000] Q. Would the writers let the publishers fix such a price?

A. It is nonsense. That is exactly what the organization exists for. It has a vigilance committee to keep the publishers in order.

Recross-examination.

By Mr. Hotz:

Q. Just one more question. You say this organization which you are President of—

A. Song Writers Protective Association.

Q. What is its membership made up from?

A. Its membership is made up of melody writers, music writers, and lyric writers who wish to protect themselves.

Q. They don't collect any money?

A. No.

Q. For public performance rights?

A. No.

Q. They don't fix the rate of contract?

A. No.

Q. That is done through ASCAP?

A. Yes.

Q. Your organization is for the purpose of seeing that you get a fair and square deal with publishers and users?

[fol. 1001] A. Not users, I wouldn't want to make any answer that would imply that the deal at present is an unfair one.

Q. Does the publisher have an association independent of ASCAP?

A. They have the Music Publishers Protective Association.

Q. That association does fix the prices for copyrighted musical compositions?

Mr. Finkelstein: Objected to on the ground it is incompetent, irrelevant and immaterial.

A. Yes.

Q. You are a publisher?

A. Yes.

Q. Are you a member of that organization?

A. Yes, the M. P. P. A., sure.

Q. The only organization that fixes the price for the use of the copyrighted music, vocal and instrumental, is ASCAP; that is the association that does it for public performance rights?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. That is misleading; it doesn't fix prices for the use of individual sheets of music. It fixes a price for the accessibility and availability of its mass of copyrights.

Q. In the catalogue?

[fol. 1002] A. Yes.

Mr. Frohlich: What do you mean by "fixing prices," Mr. Hotz? What do you mean by that? Why don't you define it?

Q. Who determines the amount that the user shall pay?

A. We determine what the user shall pay in ratio to the use he makes. A small hotel that uses compositions for playing to people sitting around the lobby pays almost nothing. A large hotel where a thousand people come in and dance, I think they should pay more.

Q. And the determination of that sum and the collection, they are what ASCAP is organized to do?

A. That is right.

(Adjourned until 3 o'clock p. m.)

[fol. 1003] DEPOSITION OF EDWIN H. MORRIS

[fol. 1004] (After Recess) 3 p. m.

EDWIN H. MORRIS, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your name and address?

A. Edwin H. Morris, Oak Lane, Hummocks Road, Larchmont, New York.

Q. What is your occupation, Mr. Morris?

A. Music publisher.

Q. With what firm are you connected?

A. Harms.

Q. Harms Incorporated?

A. M. Witmark & Sons, Remick Music Corporation.

Q. How long have you been connected with those companies?

A. Since 1929.

Q. What is your official connection with the companies at this time?

A. Vice-President.

Q. Have you anything to do with the management of the business of these companies?

[fol. 1004-A] A. Yes, I manage the companies.

Q. How many years have you been engaged in the publishing business?

A. Approximately ten.

Q. Do you know the other publishers of music in the City of New York?

A. Yes, quite well.

Q. Have you an acquaintance among the authors and composers of music in the City of New York?

A. Yes.

Q. Your companies, are they members of the American Society of Composers, Authors and Publishers?

A. Yes.

Mr. Frohlich: Will it be stipulated that the contracts between Harms, Inc., Remick Music Corporation and M. Witmark & Sons and the American Society of Composers,

Authors and Publishers are substantially identical with the contract, Exhibit 2?

Mr. Nye: The same in form and substance.

Mr. Frohlich: It is stipulated that the contracts between the members of the American Society of Composers, Authors and Publishers and the Society, including contracts [fol. 1005] of writers, and contracts of publishers, are substantially the same as the contract Exhibit 2 in evidence.

Q. Mr. Morris, where is the main office of Harms, Incorporated?

A. 1250 Sixth Avenue.

Q. Where is the main office of Witmark?

A. They are all the same.

Q. All the companies that you represent are located in the same place?

A. The same building.

Q. Are they occupying those offices under any leasehold?

A. Yes.

Q. Do you know how long a lease you have there?

A. Five years with an option for five more.

Q. What rental do you pay under that lease?

A. Do you want each company?

Q. Yes.

A. This is not accurate.

Q. Give us an approximate figure.

A. Approximately 12-5.

Q. For each company?

A. For all; I can't give you the separate amounts.

Q. \$12,500 would cover the rental for all the companies?
[fol. 1006] A. Yes.

Q. Have you many employees?

A. Approximately fifty to sixty, that is in that particular division.

Q. Harms, Inc. is engaged in the business of publishing sheet music?

A. That is right.

Q. And has it specialized in any particular kind of sheet music?

A. For a number of years, production music, show music.

Q. What do you mean by production music?

A. Legitimate theatre.

Q. You mean that Harms, Inc. publishes musical compositions that are contained in musical shows that are produced upon the spoken stage?

A. Musical shows, that is right.

Q. Is M. Witmark & Sons specializing in the same kind of music business?

A. No, not in recent years; popular and picture compositions.

Q. Did they formerly specialize in production music?

A. In former years, some years back.

Q. What kind of music business does Remick Music Corporation do?

A. Popular and some picture.

[fol. 1007] Q. Have you a form of contract which is typical of the contract entered into between Harms, Inc. and its writers and composers for its production music?

A. I think I have.

Q. Will you be kind enough to produce that contract?

A. Here are two contracts, one for Lew Fields and Vincent Youmans (producing papers).

Mr. Frohlich: I offer them in evidence.

(The papers just offered in evidence were marked Plaintiffs' Exhibit No. 15, of this date.)

Q. Have you another form of contract between Harms and a composer or writer?

A. Yes; George Gershwin (producing paper).

Q. Is this all one contract?

A. And Cole Porter.

Q. You have produced a contract between Harms and George Gershwin and a contract between Harms and Cole Porter?

A. Yes.

Mr. Frohlich: I offer them in evidence.

Mr. Nye: I object to the materiality of these exhibits.

(The papers just offered in evidence were marked respectively Plaintiffs' Exhibit No. 16, and Plaintiffs' Exhibit [fol. 1008] No. 17, of this date.)

Mr. Frohlich: May we be permitted to make photostatic copies and to include the copies in the record in place of the originals, with the same force and effect as the originals?

Mr. Nye: Yes.

Q. Will you outline very briefly to us, Mr. Morris, the procedure followed by Harms, Inc. in arranging for the

publication of sheet music pursuant to a contract such as the contracts that have just been received in evidence; what is done?

A. The composer submits a number for publication. If it is acceptable it is published in regular sheet music form, and if we intend to exploit it to any degree it is necessary to have dance orchestrations and vocal orchestrations. That about covers the material necessary.

Q. Is it customary for Harms Inc. to copyright its musical compositions as unpublished works or as published works?

A. I am a little confused on that. I believe we follow both practices.

Q. Is there any set practice on it?

A. Maybe you can clarify that a little more.

[fol. 1009] Q. Do you frequently or do you at all, after you have obtained the rights of a composition from the author or composer, refrain from publication by registering such composition for copyright under section 11?

A. Quite frequently. If it is our intention to publish we send a manuscript.

Q. When you thereafter publish the composition then you copyright it as a published work?

A. Yes.

Q. Is there any particular reason why Harms, Inc. sometimes copyrights a work as an unpublished work instead of a published work?

A. Yes; so as to protect the composer as well as ourselves.

Q. Is it done in order to keep the publication from interfering with any other rights in the composition?

A. I don't quite understand that.

Q. Well, now, your company specializes in production numbers. When a production is on the stage it appears in the production, the particular composition to which you have obtained the rights from the author and composer; is it desirable from any financial or business point of view to permit the composition to be played on the stage before the composition is sold to the general public?

A. I haven't had much experience with shows. That is [fol. 1010] a field I haven't handled. Mr. Max Dreyfus handled that.

Q. Is it the practice of Harms, Inc. on occasion to restrict musical compositions?

A. It has been, yes.

Q. What compositions are restricted by it?

A. At the moment?

Q. At the moment.

A. Very few at the moment; in the past there was quite some number.

Q. What compositions were restricted?

A. "Rhapsody In Blue"; a good many of the productions such as "No, No, Nanette," "Hit The Deck," "Scandals", and numerous other musical comedies.

Q. For how long a period were some of these compositions restricted?

A. A number of them were on the Society's restricted list for several years.

Q. Was there any particular reason for restricting those compositions?

Mr. Nye: I object to that as calling for speculation.

Q. Does the restriction of a composition bear any relation to the performance of the number on the stage or in a motion picture?

[fol. 1011] Mr. Nye: I object to the question as calling for a conclusion.

Q. Is there any relation between those two things?

A. No.

Q. So you can't tell us why you restrict these compositions?

A. Yes, I can tell you.

Q. Why?

Mr. Nye: Objected to as calling for a conclusion.

A. Most of the producers request that numbers be restricted so that it won't in any way injure the musical play during its run, and I believe in some of the agreements it is stipulated that the right of restriction rests with the producer.

Q. If the particular number so restricted were played, were open to the public and could be performed on the radio and in hotels and elsewhere, would that effect the life or value of the composition in the production or in the picture?

A. Yes, I believe it would; it would shorten the life.

Q. It would shorten the life of the production or the picture?

A. Yes.

Mr. Nye: Give me an objection before that last answer; [fol. 1012] calls for a conclusion and opinion, without foundation.

Q. Do you know how much money is invested in these musical productions,—the average musical production that is put on as a musical?

Mr. Nye: No foundation; calling for a conclusion and speculation.

A. I can give you one specific play that I happen to know about, "Fifty Million Frenchmen," approximately \$275,000.

Q. Who produced that play?

A. Gest.

Q. E. Ray?

A. Yes.

Q. Did that play contain any songs published by Harms Incorporated?

A. It did.

Q. What were the names of the songs?

A. I will have to refresh my memory. I may get a little help from the boys here if they can remember it. It is very difficult to remember titles.

Q. Were any numbers restricted by Harms, Inc.?

A. The entire score was restricted during the run.

Q. That was restricted during the full run of the play in New York?

[fol. 1013] A. Yes.

Q. Did I understand you to testify that you came to Harms, Inc. about ten years ago?

A. Approximately nine or ten years ago.

Q. Approximately at that time can you remember the names of any outstanding hits that were published by Harms, Inc.?

A. I would much prefer to use one of the other companies which I am much more familiar with.

Q. Which company are you much more familiar with?

A. Witmark at that time.

Q. Can you tell us what outstanding hits were published by M. Witmark & Sons?

A. During the first year I remember "Tiptoe Through The Tulips," "Painting The Clouds With Sunshine," "Song Of The Nile."

Q. How many copies of the sheet music of those songs were sold, if you know?

A. In the case of "Tiptoe", approximately 650,000; "Painting the Clouds," 700,000; "Song of the Nile", about 450,000.

Q. Can you tell us the names of any recent hit songs published by M. Witmark & Sons?

A. "Vini Vini."

Q. Is that an outstanding popular hit?

[fol. 1014] A. Yes.

Q. And about how long ago was that published?

A. About six months ago.

Q. Can you tell us approximately the number of copies of sheet music that were published?

A. About 45,000.

Q. Does that represent about tops in the sale of sheet music today?

A. Pretty near; there are occasionally hits that may run more, but that is about it.

Q. Has Harms, Inc. or Witmark or Remick sold any millions of copies of any composition in the last five years?

A. There hasn't been any of those since I have been in the business.

Q. What is the life of a hit song today?

A. Depending on the type, from six to ten weeks.

Q. What was the life of a hit song published ten years ago, published by one of your companies?

A. Six months.

Q. In your contracts with composers and writers do you undertake to pay them a percentage of the moneys received from the manufacture and sale of mechanical reproductions of their compositions?

A. Yes, we do.

[fol. 1015] Q. Has that been the practice in all of your contracts over the years?

A. Yes.

Q. Do you have any contracts with any composer or writer under which you undertake to pay such writer or composer for any public performance for profit of their composition?

A. No.

Mr. Nye: I object to the question as calling for a conclusion.

Q. Your companies own the copyrights of the compositions published by them?

A. Yes, that is right.

Q. Do they license manufacturers of piano rolls and disk records to mechanically reproduce the compositions, under written contract?

A. Yes.

Q. Have you with you any such form of contract?

A. I don't know whether I have that or not. No, I have not.

Mr. Nye: We will stipulate that it is the same in substance, if it is. Let him look at it (handing paper to the witness).

The Witness: That is the same.

Mr. Frohlich: It is stipulated that the mechanical reproduction contracts issued by Harms, Inc., Remick and M. Witmark & Sons, are substantially identical with Plaintiffs' Exhibit 12.

Mr. Nye: We agree to that, in substance.

Q. Under your contracts with mechanical companies do you reserve any control over the sale of the records and piano rolls by those companies, in the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, the contract calls for what we call home consumption.

Q. Are these companies permitted to sell these disks in the State of Nebraska and in other States of the Union?

A. Yes, every State.

Q. You don't appoint these companies as your agents to fix the price or collect any moneys for you on any rights in connection with the public performance for profit of those compositions, do you?

A. No, we do not.

Q. Would you be willing to permit those companies to fix and price and to collect any moneys for you for the public performance for profit of these compositions within the State of Nebraska?

[fol. 1017] Mr. Nye: Objected to as calling for a conclusion and speculation.

A. No.

Q. Let me read to you a section of the Nebraska law which is at issue in this case (reading Section 2, subdivision "(A)" of Legislative Bill No. 478).

Now that I have read this section of the act to you, would you be able—when I say “you” I mean your companies, Mr. Morris—would you be able to determine and fix a price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska for all uses and purposes?

Mr. Nye: I object to the question as calling for conclusion, speculation; no foundation.

A. No.

Q. Have copies of your musical compositions been sold within the State of Nebraska over the years?

A. Yes.

Q. Have they been sold to jobbers and dealers within that State?

A. Yes.

Q. Do any of your companies have any branch offices in the State of Nebraska?

A. No.

[fol. 1018] Q. Now, the copies of the compositions that were sold to dealers and jobbers in the State of Nebraska are now property of the dealers and jobbers?

A. Yes.

Q. Have you any control over them or can you demand they back?

Mr. Nye: Objected to as calling for a conclusion.

A. No.

Q. If you were to determine and fix the price to be charged for the public performance for profit of your copyrighted musical compositions within the State of Nebraska, what factors would you have to take into consideration?

Mr. Nye: Objected to as calling for speculation.

A. Well, the number of licensees.

Q. Assuming that there are 367 establishments in the State of Nebraska that use music, copyrighted musical compositions published by your firm, how would you go about it to determine what price each of those 367 establishments would have to pay you on each one of your compositions for public performance for profit?

Mr. Nye: Objected to as calling for speculation.

[fol. 1019] A. I would know how to go about it.

Q. Would you be able to fix at this time the price for the television rights of any of your compositions within the State of Nebraska?

Mr. Nye: Objected to as calling for speculation; wholly immaterial.

A. No.

Q. Have you any data or information in your possession now from which you can determine the value of any composition published by you with respect to the television rights within the next twenty-eight years to come?

A. No, I have not.

Q. Have you any facilities now that would help you to ascertain in which of the establishments in Nebraska your music is being used without the payment of any license fee?

A. No.

Q. Would you have to employ anybody for that purpose if you wanted to obtain that information?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, we would.

Q. Suppose you wanted to determine what establishments were correctly playing your music copyrighted by [fol. 1020] you and what establishments were infringing on your music, how would you go about it?

Mr. Nye: Objected to as calling for a conclusion.

A. I would have to employ people and send them all over the State of Nebraska.

Q. Would you have to employ a lawyer to bring suits for infringement where there were infringements?

Mr. Nye: Objected to as calling for speculation.

A. Yes.

Q. Would the people that you would employ for the detecting of infringement have to be skilled in music?

A. They would have to be experience- in our business.

Q. Are you familiar with salaries paid to people who are skilled in music?

A. In what vocation, what type of work?

Q. For the purpose of investigating?

A. No. I assume any men in that field would be all right.

Mr. Nye: I move to strike out the answer except the word "No".

Q. You said you would have to have a staff of people in Nebraska. Does it mean that you would have to have an office there?

[fol. 1021] Mr. Nye: Objected to as calling for a conclusion.

A. Yes.

Q. Can you give me an estimate of what it would cost to employ a staff of clerical help and attorneys to protect your rights within that State?

Mr. Nye: I object to the question; no foundation laid for the witness's knowledge; also calling for a conclusion.

A. I could not determine what the lawyer's fees would be, but we would undoubtedly have to spend a substantial amount of money, a great deal more than we could afford, for that service.

Mr. Nye: I move to strike out the answer as not responsive.

Q. Can you give us an idea in dollars and cents?

A. We will estimate that we would put on one man in charge at \$5,000 a year,—

Mr. Nye: I move to strike out the answer.

A. (Continued:) —and clerical help.

Mr. Nye: I move to strike out the answer; assumes facts not in evidence; it being clear that the witness is speculating and is not expressing an opinion on any reasonable foundation therefor.

[fol. 1022] Q. Would you have to engage an office down there?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, we would have to open quarters there.

Q. Would you have to put some men there?

A. Yes.

Q. Would you have to pay rent?

A. Yes.

Q. Would you have to pay the salary of the man in charge.

A. Yes.

Q. How much do you think you would have to pay?

Mr. Nye: I object to the question as calling for the expression of opinion without proper foundation.

A. Based on present salaries paid men doing the same type of work for the Society, I assume at least \$5,000.

Q. Your firm has had experience over the past twenty years with attorneys in New York in trying infringement cases on copyright work?

A. Yes.

Q. You are familiar with the fees paid those attorneys?

A. Since I have been in the business.

Q. For ten years?

[fol. 1023] A. Yes.

Q. What would it cost you to employ a lawyer skilled in copyright law to bring infringement suits down there?

Mr. Nye: Objected to as calling for a conclusion; no foundation being laid for the witness's knowledge.

A. I don't know the lawyers in Nebraska very well. It is pretty hard to give you a figure down there.

Q. If you were to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska, at the time copies of your compositions were first sold in that State, would you be able at this time to fix in advance a price adequate and fair to you and to the user for the full period of the copyright?

Mr. Nye: Objected to as calling for a conclusion; speculation; no foundation having been laid.

A. I don't think we could do it.

Mr. Nye: I move to strike out the answer for the reason that it is clearly based on speculation and not on knowledge.

Q. Could you determine at the time that you first sold a copy of a composition in the State of Nebraska what [fol. 1024] the vogue and popularity of that number would be in the future?

Mr. Nye: Objected to as calling for a conclusion.

A. No.

Q. Does it take a considerable period of time to find out

whether a composition has any popularity or becomes valuable to the user?

A. A composition can become popular, depending on the nature of the composition, in a few months or a few weeks in some cases, but as to the value for the future that is very difficult to determine, as to whether it will have any lasting value.

Q. Would the size of the establishment in which your composition is to be played in the State of Nebraska have anything to do with the price to be charged for the public performance for profit of your compositions?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes.

Q. Would the size of the audience reached have something to do with it?

A. Yes.

Q. Would the extent of the use have something to do [fol. 1025] with it?

A. Yes.

Q. Would the nature of the establishment have something to do with it?

A. Yes.

Q. Would the profits made by the establishment have something to do with it?

A. Yes.

Mr. Nye: I object to all these questions as extremely leading.

Q. Would these factors that I have just mentioned vary from week to week?

Mr. Nye: Objected to as calling for a conclusion and speculation.

A. Yes.

Mr. Nye: And leading.

Q. Do your companies participate in the royalties paid by the Society each year?

A. Yes.

Q. What royalties did they receive from the Society in the year 1935?

A. Just a moment. M. Witmark & Sons, \$80,716; Remick, \$67,108; Harms, \$94,615.

Q. What moneys did they receive in 1936?
[fol. 1026] A. Witmark, \$42,275; Remick, \$35,008; Harms, \$50,545.

Q. What moneys did they receive in 1937?

A. Witmark, \$89,843; Remick, \$75,413; Harms, \$137,358.

Q. Do you consider your contracts between Harms, Remick and Witmark and the Society valuable to you?

Mr. Nye: Objected to as calling for opinion.

A. Yes, we do.

Q. What do you value those contracts at in dollars and cents?

Mr. Nye: Objected to as calling for a conclusion and speculation, without foundation.

A. Just how do you mean?

Q. In dollars and cents; what are your contracts worth, with the Society?

A. A great deal, an immense amount; I can't give you an exact figure; it would be speculation.

Q. Are they important to your business?

Mr. Nye: Same objection.

A. They are the life of our business.

Q. Without those contracts could your company stay in business?

Mr. Nye: Same objection.

A. It would be the difference between staying in business [fol. 1027] and going out of business.

Q. Are those contracts the chief source of your revenue today?

A. Yes.

Q. Are you willing to have those contracts with the Society declared invalid?

Mr. Nye: Objected to as calling for a conclusion; immaterial.

A. No.

Q. Does Harms, Inc. publish a catalogue of its compositions?

A. Yes, we do.

Q. Have you brought such a catalogue with you?

A. No, I have not.

Q. Does Witmark publish a catalogue?

A. Yes, all companies have catalogues.

Q. You haven't got them with you?

A. No.

Q. When did Harms become a member of the Society, do you know?

A. In 1914.

Q. When did Witmark become a member?

A. 1914.

Q. When did Remick become a member?

[fol. 1028] A. I am not certain of that date; I think it was the same.

Q. Do you know of your own knowledge prior to 1914 if either of those companies ever received from any source whatever any moneys for public performance for profit of the compositions published by them?

A. No, they did not.

Mr. Frohlich: Your witness.

Cross-examination.

By Mr. Bennett:

Q. Mr. Morris, I think you said you were a director of the American Society of Composers, Authors and Publishers?

A. That is right.

Q. Are you a member of any of the committees of the Society?

A. No, I am not.

Q. How long have you been a director?

A. About five years.

Q. I notice in giving the income you received from the Society in 1935, 1936, and 1937, there is a very marked discrepancy between the figures of 1935 and 1936. Can you explain the reason for that?

A. Our companies withdrew from ASCAP at the end of 1935 in an effort to set up our own performing rights bureau.

Q. When you say "our companies" you mean Witmark, [fol. 1029] Remick and Harms?

A. Yes.

Q. Who owns those companies?

A. Warner Brothers Pictures.

Q. What other companies does Warner Brothers own?

A. We have some other companies that are subsidiaries, such as New World, T. B. Harms, Shubert—that is about all I think of.

Q. Were those companies all members of ASCAP prior to January 1, 1936?

A. Yes.

Q. Did they withdraw from ASCAP?

A. Yes.

Q. Do you know the total amount of money paid to all of the Warner companies, the Warner owned companies, by ASCAP during 1935?

A. Approximately \$300,000.

Q. When did you give notice that you were going to withdraw from ASCAP?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. Probably in November of that year; I didn't handle it so I can't give you definite dates on that.

Q. Did you have anything to do with the other Warner [fol. 1030] owned companies other than those three other subsidiaries?

A. Yes.

Q. You handled those along with Witmark, Remick and Harms?

A. Yes.

Q. What are your duties as Vice-President?

A. Selection of songs for publication, contact between the New York office and the studio and the engaging of writers, and the general overseeing of what we call the professional department, people to exploit the songs and the sales, and of course my duties at ASCAP as director.

Q. You said that part of your duties are sales?

A. That is right.

Q. Will you state approximately the gross amount of sheet music sales by Warner Bros. subsidiaries for the first six months of 1935?

A. I don't have those figures.

Q. Can you approximate it?

A. No, I couldn't even hazard a guess.

Q. Can I refresh your recollection?

A. You may.

Q. Suppose I tell you that your first six months sales were \$585,000 for 1935?

Mr. Finkelstein: I object to the entire testimony as being [fol. 1031] incompetent, irrelevant and immaterial, not within the issues.

A. I just couldn't tell whether that figure is anywhere near the right amount at that time.

Q. You are in charge of sales?

A. No, general supervision. Our sales are broken down in accordance with types of merchandise.

Q. Can you state approximately what your sheet music amounted to for any of the companies, either Witmark, Harms or Remick?

A. For each period?

Q. Yes.

A. No, I could not.

Q. Can you state the amount of your sheet music sales for the first six months of 1936, for those companies?

Mr. Finkelstein: Same objection.

A. For 1936? No.

Q. Can I refresh your recollection on that?

A. Yes.

Q. If I told you it was \$140,000 approximately, does that help you?

A. No.

Q. Don't you know as a matter of fact that your sheet music sales in the first six months of 1936 materially decreased? [fol. 1032]

A. Yes.

Q. Don't you know approximately how much that decrease was?

A. No.

Q. You don't know that it was 75 or 50 per cent of what it was the preceding year?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial; the witness has already answered and said he does not know.

A. No, I do not.

Q. Your records will show that, will they not?

A. Yes.

Q. Your records will show the amount of sheet music sales?

A. Yes.

Q. Can you ascertain that figure by calling your book-keeping department or whatever department has charge of your records?

A. Yes, I believe I could.

Q. Will you do that?

A. Yes. Do you want me to get it afterwards or now?

(Discussion off the record.)

Q. Mr. Morris, on January 1, 1936, what did the music [fol. 1033] companies that you represent do with respect to selling licenses for public performance for profit of their copyrighted works?

A. I can't give you much information there because I did not handle it and had nothing to do with it.

Q. You don't know?

A. I have a very vague idea.

Q. You don't know how many licenses were issued for the Warner Bros. music companies?

A. No, I do not.

Q. Do you know the amount of license fees?

A. That we collected?

Q. That you collected?

A. No, I couldn't tell you that.

Q. Prior to the withdrawing from the Society you made surveys, did you not, to determine the ratio of the performances of Warner compositions with respect to the entire ASCAP catalogue?

A. Yes, that was done.

Q. Will you state approximately the ratio between Warner Brothers companies' performances and ASCAP as a whole?

A. I believe there were around 20 or 22 per cent.

Q. Are you talking about performance or the ratio of in-[fol. 1034] come received by the Warner group from ASCAP?

A. The performance as I remember it.

Q. Don't you know that checks made at that time showed between 30 and 40 per cent?

A. No, I do not.

Q. When did Warner Brothers subsidiaries return to ASCAP, re-enter as members?

A. July of 1936.

Q. Why?

Mr. Finkelstein: Objected to as calling for speculation; hypothetical; incompetent, irrelevant and immaterial to the issues.

Mr. Bennett: The witness is an official of the companies and has testified that he handled various phases and supervised various phases of the business; that he is a director of ASCAP, has been for the last five years, and it must be within his knowledge as to why they returned to the Society.

A. Mr. Warner made that decision. He decided that the method that we had undertaken was not practical or good business.

Q. What do you mean by "good business"?

A. The fact that he could not make it a paying proposition.

[fol. 1035] Q. You mean you couldn't make it a paying proposition as a non-member of ASCAP?

A. I don't believe that entered into it, as I remember; simply that the expense of contacting licensees and the local expenses that were incurred because of the infringements made it physically and financially almost impossible.

Q. What was the ratio of performances of Warner copyrighted music during the first six months of 1936 as compared with prior years?

A. During the period that we had withdrawn from the Society?

Q. Yes.

A. Very small, I think. I don't know what it was.

Q. To what do you attribute the smallness, when you say it was used from 20 to 22 per cent prior to January 1, 1936?

Mr. Finkelstein: Objected to as hypothetical and speculative; no proper foundation; incompetent, irrelevant and immaterial.

A. The terms that were asked were not agreeable to the radio people.

Q. You mean by that you could not sell licenses to perform, is that it?

A. Not at the fees we were asking.

Q. Do you know what fees you were asking?

[fol. 1036] A. No, that I am not familiar with, although in general I knew we wanted considerably more money than we had been getting.

Q. Will you state whether ASCAP commencing January 1, 1936, reduced its license fees to licensees in proportion to the amount of copyrights withdrawn by Warner Bros. when they left the Society?

Mr. Finkelstein: I objected to the question on the ground that it is incompetent, irrelevant and immaterial, on the ground that this man was not connected with the Society in January 1936 and there is nothing to show that he has any knowledge of what ASCAP did in that respect, and no proper foundation.

Mr. Bennett: He was a director at the time.

A. There has been so much talk back and forth, that I want to get it straight. I was not a director in January 1936.

Q. You were in December 31, 1935?

A. No, not during the last two months; I had been replaced by Mr. Herman Starr.

Q. Do you know whether the fees of ASCAP to the licensees were reduced by reason of the loss of the Warner copyrights?

[fol. 1037] A. I don't know what they did.

Q. You really don't know?

A. No.

Q. Don't you know as a fact that ASCAP refused to reduce the fees?

Mr. Finkelstein: I object to that on the ground it has already been answered, and on all the other grounds heretofore stated.

A. No, I do not.

Q. Have you gained that knowledge since you again became a director of ASCAP?

A. There has never been any discussion on the point.

Q. Please answer yes or no. Have you gained that knowledge?

A. No.

Q. You never heard that ASCAP refused to reduce its fees to compensate for the loss of the Warner copyrights to its licensees?

A. No.

Q. Approximately how many copyrights are owned by each one of the Warner subsidiaries, owned by you?

A. Each one or the total?

Q. You may give the total for the whole group, if you wish.

[fol. 1038] A. I would say more than six thousand; how many more than that I don't know; I don't know the exact amount.

Q. Mr. Morris, do you know of any publishers regularly engaged in the music publishing business who are not members of ASCAP?

A. I know of one or two publishers that handle catalogues. I do not consider them in the publishing business of the same nature that we are.

Q. Do you know of any reputable publishers that are not members of ASCAP?

A. No, I do not.

Q. Would you say then that substantially all of the publishers regularly engaged in sheet music publication and sales are members of ASCAP?

A. I believe so.

Q. Do you know whether the publishers regularly maintain lists of their copyrighted compositions similar to the catalogues that you have?

A. No, I don't believe they do.

Q. Is it the practice of most of them to maintain such catalogues?

A. I don't believe so.

Q. Are your catalogues complete; that is, do they contain all of the copyrights which are owned by the respective [fol. 1039] companies?

A. I believe so.

Q. Now, in connection with your sales of sheet music, referring back to that fact a moment, do you compete with other publishers in exploiting and selling your sheet music?

A. No.

Q. Why do you say you do not compete?

A. Well, we are dealing with copyrights and we are the only ones having that particular song, that composition.

Q. Do you maintain a staff for the purpose of exploiting?

A. Yes.

Q. If you did not exploit by plugging, as it is called, what would happen to your compositions?

Mr. Finkelstein: Objected to as speculation.

A. I don't know; I have never tried.

Q. Why do you do it?

A. Because I believe it is a proper method of conducting our business.

Q. Isn't it a basis for advertising your wares?

A. It is a basis of selling.

Q. If there is no competition then you don't need to exercise any ingenuity for selling?

[fol. 1040] A. How can we bring it to public attention if we do not take it around and show it?

Q. Surely, unless you are competing with one of the others or many of the other publishers the public would come to you?

Mr. Finkelstein: Objected to as improper in form, arguing with the witness; speculation.

A. I don't believe so.

Q. Then as a matter of fact you are competing with the other publishers of sheet music?

Mr. Finkelstein: Same objection.

A. No, I don't believe that.

Q. Mr. Morris, as director of the sales isn't it your duty to see that the purchaser of music purchases copyrighted compositions owned by your companies in preference to buying compositions of some other publishers?

A. No, that has no function with selling; that is no part of the duty of the sales manager or anyone directing sales. We are selling "Vini Vini", and some one else is selling "Love Walked In". The public can buy them both so far as we are concerned. We don't care. Because we are the only publishers of "Vini Vini".

Q. But you make an effort to have "Vini Vini" put on the program to the exclusion of some other composition [fol. 1041] owned by someone else, isn't that true?

A. We don't work on that basis. We simply try to get our number on. We want our number heard.

Q. If your number is on, then that excludes necessarily someone else's number at that particular time?

Mr. Finkelstein: Objected to as argumentative, hypothetical, speculative.

A. An orchestra leader can only play so many numbers on a program.

Q. Who fixes the price at which the performance rights for the copyrighted compositions owned by your companies are made available to users of music?

A. The administrative committee, I believe, of the Society. You are talking about performance rights, public performance rights?

Q. That is right. You are talking about the American Society of Composers, Authors and Publishers?

A. That is right.

Q. From your experience as a music publisher and as a member and director of the American Society, will you state whether it is not a fact that approximately ninety per cent of the usable music, commercially usable music, is copyrighted and covered by the Society's license?

Mr. Finkelstein: Objected to; no proper foundation; [fol. 1042] nothing shown that the witness knows anything about it; has not been qualified; and incompetent, irrelevant and immaterial to the issues.

A. There are many compositions that are not the property of the American Society, such as Associated Publishers and people like that.

Q. That doesn't answer the question. (The pending question was read by the stenographer). I will say, commercially usable music for public performance for profit.

A. I am not an expert on that; I can't answer that.

Q. You testified that all of the reputable musical publishers regularly engaged in the music business are members of the Society. Who as a practice owns the copyrights of *of* musical compositions?

A. The publisher.

Q. Does that help you to answer the question propounded?

Mr. Finkelstein: Same objection.

A. I understand what you want. The only thing is, there are many compositions throughout the country by different people that I don't know anything about.

Q. I am talking about commercially ~~usable~~ copyrighted music.

A. That is what makes it difficult; I don't know.

[fol. 1043] Mr. Finkelstein: I object to the form of the question, misleading.

Q. Let me state it this way, then. What percentage of the copyrighted music comes under the ASCAP license today? When I say today I mean at the present time.

A. Copyrighted music?

Q. Yes.

A. I haven't the faintest idea.

Q. What would be your best opinion?

Mr. Finkelstein: I object to the question as calling for speculation, hypothetical; witness has already answered it; incompetent, irrelevant and immaterial.

A. I can't give you any more information; I don't know.

Q. Would you say that there was 90 per cent, or that that is too much or too little?

Mr. Finkelstein: Same objection, and on the further ground that counsel is attempting to compel the witness to answer something that he has already answered.

A. I couldn't fix it, Mr. Bennett.

Q. What percentage do the catalogues of your particular companies bear to the whole of ASCAP music?

A. That I don't know. The total number of copyrights? [fol. 1044] Q. Approximately.

A. I haven't any idea.

Q. As a director of ASCAP you know the method by which royalties are divided amongst the members?

A. Yes.

Q. Is it not a fact that one of the things taken into consideration in the distribution of the royalties is the number of copyrights?

A. Yes, that is true.

Q. In respect to the income, then, the ratio of the amount received by you and the other members of ASCAP, what would you say that the total of your copyrights bears to the total? You must have that knowledge.

Mr. Finkelstein: No foundation laid for the question; incompetent, irrelevant and immaterial.

A. I can't measure the copyrights that way.

Q. Would you say it was ten per cent?

A. I couldn't say.

Q. Fifteen?

A. I haven't the slightest idea.

Mr. Finkelstein: Same objection.

Q. Mr. Morris, who receives the highest amount from ASCAP of any of the publishing companies?

[fol. 1045] Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I believe Harms, Inc.

Q. Do you know who receives the second highest?

Mr. Finkelstein: Same objection.

A. No, I don't know.

Mr. Bennett: That is all.

Q. Mr. Morris, have you received and do you know the gross amount of sheet music in dollars sold by the Warner music subsidiaries during the first six months of 1935?

A. Yes.

Q. Will you state the amount?

A. \$696,782.90.

Q. Do you know the gross amount sold by the same companies for the last six months of 1935?

A. \$718,000.

Q. Now, will you state the gross amount of sheet music sales by those companies for the first six months of 1936, when the companies were not members of the American Society of Composers, Authors and Publishers?

A. \$229,000 even.

Q. Will you state the date on which the companies re-[fol. 1046] turned to membership in the Society?

A. July, 1936.

Q. Will you state the gross amount of sheet music sales for the last six months of 1936, during which period the companies were again members of the Society?

A. \$616,000.

Mr. Bennett: That is all.

[fol. 1047] DEPOSITION OF GEORGE W. MEYER

[fol. 1048] GEORGE W. MEYER, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your name and address?

A. George W. Meyer, 205 West 57th Street, New York City.

Q. What is your business?

A. Composer.

Q. Composer of music?

A. Composer of music.

Q. Do you write lyrics?

A. Occasionally.

Q. How many years have you been a composer?

A. About thirty.

Q. I show you a list of compositions purporting to be your compositions, and ask you whether that represents a true and accurate list of the compositions that you composed (handing list to the witness)?

A. Do you want me to look all through this?

Q. Look at each page; it won't take you long to tell.

A. These are all my compositions; whether there are any omissions or not I couldn't tell you.

Q. This accurately represents the bulk of your compositions? [fol. 1049]

A. Yes.

Mr. Frohlich: I will offer it in evidence.

(The paper just offered in evidence was marked Plaintiffs' Exhibit No. 18, of this date.)

Q. Will you tell us, Mr. Meyer, which of your compositions were hit numbers or very popular numbers, outstanding over the past twenty years?

A. "Tuck Me To Sleep In My Old Kentucky Home," "My Mother's Rosary," "When You're A Long Long Way From Home," "For Me And My Gal," "Brown Eyes, Why Are You Blue," "Sittin' In A Corner," "Hiawatha's Melody Of Love," "Lonesome," "I Believe In Miracles," "I'm Sure Of Everything But You," "A Girlie Was Just Made To Love," "That Mellow Melody." It is pretty hard to remember all of them.

Q. Did any of your compositions ever gross a million copies in sales?

A. Many of them.

Q. Name some.

A. "When You're A Long Long Way From Home," "My Mother's Rosary," "Tuck Me To Sleep"—close to three million.

Q. When were those three composition first published?

A. "Tuck Me To Sleep" in 1921; the others before that.

[fol. 1050] Q. Have you had any recent hits, within the last two or three years; outstanding hits?

A. "I Believe In Miracles," that was an outstanding hit.

Q. And any other compositions?

A. "I'm Sure Of Everything But You."

Q. How many copies of those compositions were sold, those two you have just named?

A. "I Believe In Miracles," I believe was around 96,000 copies.

Q. And the other one?

A. The other was around 115,000. They were No. 1 in the Lucky Strike survey.

Q. Are you acquainted with members of your profession?

A. Yes.

Q. Do you know most of the song writers and composers?

A. Yes.

Q. And are you acquainted with the publishers?

A. Yes, I guess so.

Q. Do you know whether it is the usual and customary thing for a popular outstanding hit, at the present time, to sell under 500,000 copies?

A. I don't know of any that sold that or near it.

Q. Has any song within the last five years, published by any publisher that you know, or composed or written by [fol. 1051] any composer or writer that you know of, sold as many as one million copies?

A. None that I know of.

Q. Do you know what this diminution of sales was due to?

Mr. Nye: I object to the question as calling for speculation, no proper foundation having been laid of knowledge on the part of the witness.

A. I am under the impression that it is due to radio.

Mr. Nye: I move to strike out the answer as not being a statement of fact but an impression of the witness.

Q. Those three songs you mentioned which grossed more than one million copies in the sales of sheet music, how long did those three songs remain popular?

A. From three months to a year.

Q. And on the two songs that you mentioned, within recent years as outstanding hits, how long did they remain popular?

A. Oh, at most four months.

Q. Does a popular, outstanding hit today retain its popularity for as much as a year?

A. Very few.

[fol. 1052] Q. Do you know of any song within recent years that has been popular as much as a year?

A. No, I do not.

Q. What is the average life of an outstanding, popular song today?

A. Anything over three to six months I should think would be tops. It would have to be very outstanding to be six months.

Q. Now, when you entered into contracts with various publishers over the past twenty years with respect to the publication of your various compositions, have you in any of those contracts provided that you should be paid compensation for the public performance for profit of those compositions by your respective publishers?

Mr. Nye: Objected to as calling for a conclusion.

A. No.

Mr. Finkelstein: Mr. Nye, you wouldn't want all those contracts put in evidence? If you want all those contracts put in evidence, if that is what you regard as the only evidence, we might have to produce all those contracts.

(Discussion off the record.)

Q. I show you this contract, Mr. Meyer, Plaintiffs' Ex- [fol. 1053] hibit 3, which is a contract between Irving Berlin, Inc. and Truman Tomlin, Coy Poe and Jimmy Grier, on a form known as Standard Uniform Song Writers Contract, and ask you if the provisions of this contract are substantially identical with the contracts that you have made within recent years with your publishers on your respective compositions (handing paper to the witness).

A. Yes, they are the same, except that there might be a difference in the royalty rate. I might get three cents a copy for orchestrations where there is two cents there.

Q. You heard me read to Mr. Morris, the preceding witness, the section of the Nebraska statute with regard to de-

termining and fixing the price for all uses and purposes of the copyrighted compositions, didn't you?

A. Yes.

Q. Are you able to determine and fix a price on your compositions for the purpose of public performance for profit of your compositions within the State of Nebraska?

Mr. Nye: I object to the question as speculative, calling for a conclusion.

A. I would not have the least idea how to go about it.

Q. Have many of your compositions been sold to dealers and jobbers of music in the State of Nebraska?

[fol. 1054] Mr. Nye: Same objection.

A. I guess so; I never had anything to do with the sales department.

Q. Have you ever been within the State of Nebraska?

A. Yes, I played in vaudeville in Lincoln, Nebraska.

Q. Did you play any of your compositions in that State?

A. Yes.

Q. Did you ever hear any other people play or perform your compositions in that State?

A. On that bill.

Q. Played your compositions or sung them?

A. Yes, sir.

Q. If you determined to go ahead and fix a price for all uses of your compositions within the State of Nebraska, and assuming that there are at least 367 places or establishments within the State of Nebraska which use music, what would you have to do in order to determine and fix such price for all uses?

Mr. Nye: I object to that, the witness having already answered that he had no idea of what he had to do to determine or fix a price.

A. No; I don't know.

Q. You have no experience outside of being an author [fol. 1055] and composer?

A. That is right.

Q. You have relied, since your membership with the American Society of Composers, Authors and Publishers, upon that contract with the Society, for your compensation for the public performance of your works for profit, have you not?

A. I have.

Q. Is the Society doing something for you that you are unable to do for yourself?

Mr. Nye: I object to the question as calling for a conclusion and speculation.

A. Positively.

Q. Are you financially able at the present time to employ an investigator skilled in music to go round in the State of Nebraska among the various establishments for the purpose of detecting infringements of your compositions?

Mr. Nye: I object to the question as calling for speculation.

A. No.

Q. Are you financially able to employ an attorney, at the present time, in the State of Nebraska, to bring suits to protect your compositions?

Mr. Nye: I object as calling for speculation and no [fol. 1056] foundation being laid for any knowledge on the part of the witness.

A. No.

Q. Mr. Meyer, assuming that there are 367 establishments in the State of Nebraska or more, assuming that those establishments every day in the week play copyrighted musical compositions, and assume that these establishments play some of your compositions from time to time, are you in a position at the present time, financially or otherwise, to send a man down into the State of Nebraska for the purpose of making inquiry with respect to the use of your compositions in those 367 establishments?

Mr. Nye: I object, on the ground that the question is improper, hypothetical, based on facts not in evidence, calling for speculation.

A. I am not in that position.

Q. Have you ever brought any infringement suits to protect your public performance for profit rights anywhere?

A. Only through ASCAP.

Q. But other than through ASCAP, have you personally brought any such suits?

A. No.

Q. When did you join ASCAP?

A. 1914, I think it was March 26th.

[fol. 1057] Q. Prior to 1914 did you receive any revenue whatever for any public performance for profit of any of your compositions?

A. I did not.

Q. When for the first time did you begin to receive compensation for public performance for profit of any of your compositions?

A. 1921.

Q. From whom did you receive such compensation?

A. ASCAP.

Q. Have you been in receipt of such compensation regularly since 1921, from ASCAP?

A. Yes, I have.

Q. What did you receive from ASCAP as such compensation in the year 1935?

A. I haven't the figures.

Q. Give me an approximate figure.

A. 1935? I would say around \$12,000.

Q. What did you receive in 1936?

A. Probably around 14 or \$15,000.

Q. What did you receive in 1937?

A. Around \$18,000.

Q. What was your receipt from the sale of sheet music from all your compositions, and from all your publishers [fol. 1058] in 1935?

A. I don't believe it was a thousand dollars.

Q. What was the receipt from the sale of sheet music from all your publishers on all your compositions for 1936?

A. No more.

Q. What was the receipt from the sale of sheet music from all your publishers on all your compositions for 1937?

A. Just a minute. For 1936 it might have been \$1200.

Q. How much in 1937?

A. Three or \$400.

Q. What did you receive from the sale of sheet music on the average each year from 1914 to 1935—I will correct that, until 1925, that is an eleven-year period; give us the average, about, each year.

A. I know there was one year I received about \$60,000.

Q. What year was that?

A. That would be 1921.

Q. What did you receive in other years during that period; can you refresh your recollection on that?

A. It was never less than twenty, between twenty and twenty-five.

Q. Was it ever less than twenty?

[fol. 1059] A. I think on a- average, over eleven years, I think it must have averaged about twenty-five.

Q. Between 1925 and 1935 what did you receive on the sheet music, in that ten years?

A. In 1926 I had a song, "Brown Eyes, Why Are You Blue," that sold a million and a quarter, and the next song I had that sold anything at all was "Song Of The Nile", that was in 1929; that sold about 450,000.

Q. I want from you in dollars and cents the average amount that you received over that ten-year period from 1925 to 1935.

A. In those ten years it must have averaged between two and three thousand dollars a year.

Q. Let us break that period up. For the period between 1925 and 1930, what would be the average from the sale of your sheet music?

A. That five years?

Q. That five-year period.

A. The average would be about six or \$7,000.

Q. Take the second period, from 1930 to 1935, what did you average from the sale of sheet music each year during that period?

A. I don't think I averaged a thousand dollars. I am giving you that from memory.

[fol. 1060] Q. For the period from 1920 to 1930 how much did you average from mechanical reproductions, each year during that period? I refer to royalties.

A. I must have averaged about \$5,000 a year.

Q. How much have you averaged since 1930 for mechanical royalties?

A. Maybe \$200.

Q. Each year?

A. Yes.

Q. Would you be willing to permit the publisher of your compositions to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska for public performance for profit?

A. No.

Q. Do you consider your contract with the Society valuable to you?

A. Very valuable.

Q. Can you give us an estimate of its value?

Mr. Nye: Objected to as calling for speculation based upon no foundation or knowledge.

Q. What do you think it is worth to you in dollars and cents?

Mr. Nye: Same objection.

[fol. 1061] A. What do you mean by that?

Q. If you were asked to value the contract in dollars and cents?

A. I would value it between fifteen and \$20,000 a year.

Q. You have been a member of the Society since 1914?

A. Yes.

Q. You have executed contracts similar to the present contract during the years, have you, Mr. Meyer?

A. Yes.

Q. Each five-year period?

A. Yes.

Q. Is there a reasonable likelihood that you will continue to execute similar contracts with the Society in the future?

A. Yes, every likelihood.

Q. Mr. Meyer, have you renewed any of the copyrights for any of the compositions that you have published?

A. Yes.

Q. How many have you renewed, do you remember?

A. Fifty or sixty.

Q. When these renewal periods came along did you negotiate for the renewed publication of these compositions for the ensuing 28 years, with the publishers?

A. No, I did not.

[fol. 1062] Q. With whom did you negotiate?

A. Famous Music Corporation.

Q. Did that company enter into negotiations with you?

A. Yes.

Q. Did you receive different sums on different songs or was it a lump sum?

A. A lump sum.

Q. How much did you receive from them?

Mr. Nye: Objected to as immaterial.

A. \$4,000.

Q. Do you expect to negotiate in the future with any person, firm or corporation for the renewal of your copyrights when the original terms expire?

A. I expect to negotiate with the publishers who at present have them.

Q. Approximately how many copyrights have you at the present time which will be renewed?

Mr. Nye: Objected to as calling for speculation.

A. You mean year by year?

Q. Yes.

A. I guess I must have about five hundred copyrights.

Q. What do you expect to receive from the publishers [fol. 1063] with whom you negotiate on each renewal, based on what you have received in the past?

Mr. Nye: Objected to as calling for speculation.

A. I don't know. I will make the best deal I can.

Q. You know something about this business, don't you?

A. Sure.

Q. Are publishers paying anything for renewals of their copyrights, at the present time, to writers?

A. I haven't heard so.

Q. Have you heard at all the instances where publishers paid the writers on their renewals advance royalties against the new term?

Mr. Nye: Objected to; calls for hearsay.

A. Yes.

Q. Do you know what is being paid by publishers to writers on these renewals as advance royalties?

Mr. Nye: Objected to as calling for hearsay.

A. No, except that different numbers have different values.

Q. Take some outstanding song or hit that you have published. You testified to a number of outstanding songs. Can you help me out and repeat the names of some of those songs?

A. "Tuck Me To Sleep In My Old Kentucky Home". [fol. 1064] Q. Was that a very popular song in its day?

A. Yes.

Q. Will the time come when the original copyright will expire?

A. Yes.

Q. Can you expect to renew the copyright?

A. Yes.

Q. And you expect to negotiate with the publisher who is at present holding the copyright, for renewal?

A. Yes.

Q. Do you expect to ask him for an advance royalty for the renewal?

Mr. Nye: Objected to as speculative.

A. I don't know. I expect to ask for as much as I can get.

Mr. Nye: I move to strike out the answer.

Q. Now, Mr. Meyer, with 500 copyrights that you own and expect to renew, what would you say is in the aggregate the value of those renewal rights to you?

Mr. Nye: Objected to, calling for speculation, no foundation; immaterial.

A. I would say \$25,000.

Q. Have you ever written any music for stage productions, production numbers?

A. Yes.

[fol. 1065] Q. Will you give us some of the numbers that you have written for that purpose?

A. There was "The Black Birds".

Q. Was that the name of the show or composition?

A. The name of the show.

Q. What did you write for the production?

A. Nothing outstanding. Do you want any names?

Q. Yes.

A. They were very valuable to the show but they were never popularized; "Mandy, Make Up Your Mind," "I'm A Little Black Bird Looking For A Blue Bird." It was a colored show.

Q. Did you restrict any of your numbers or cause them to be restricted?

A. No, I don't believe so.

Mr. Frohlich: You may examine.

Cross-examination.

By Mr. Hotz:

Q. You are, I presume, in the first class or division of the composer members of the American Society of Composers, Authors and Publishers?

A. Double A.

Q. That is as high as you can get?

A. Yes.

[fol. 1066] Q. In 1921 I believe you said that you got as much as \$60,000 from ASCAP one year, is that right?

A. No, royalties on songs.

Q. Those were royalties, from songs, from your publishers?

A. Yes, sheet music, phonographs and foreign orders.

Q. And all other similar income?

A. I believe the income from the Society that year was about \$700, if I remember correctly.

Q. Now it is twisted around; it is reversed?

A. Yes.

Q. In other words, you receive your substantial income from the Society and very little from the publishers?

A. Yes.

Q. And that is true largely with all composers and authors; they have the same experience with you?

A. Except those that are out in the picture colony at the Coast; they are doing better.

Q. In connection with the sheet music sales, when you received your large income from royalties from sheet music, that was by determination of the price that was charged; you got a certain percentage of the price that was charged by the publisher to the customer; you got a certain percentage of that money?

[fol. 1067] A. If a song sold for ten cents in the five and ten cent store, I got a cent a copy; if it sold for 18 cents, the royalties were three cents a copy. Is that what you mean?

Q. Yes.

A. It was all by contract.

Q. It was all by contract that you made with your publisher at the time you made your deal with him?

A. Yes.

Q. At the present time, in connection with ASCAP the price that ASCAP charges for public performance rights for copyrighted musical compositions ASCAP fixes and de-

termines the public performance licenses or rights that are charged to the users, isn't that right?

A. I believe so.

Q. In other words, you don't fix them?

A. No, I do not.

Q. And there is no publisher that fixes them?

A. Not that I know of.

Q. It is done by ASCAP, the organization known as ASCAP?

A. Yes.

Q. About how many composers and authors are there in the class, in the first division, that you are in, about how many are there?

[fol. 1068] A. Fifty or fifty-two; I believe fifty-two.

Q. One gentleman this morning that was in that class thought it was fifty-five.

A. I think it is fifty-two.

Q. Do you know how many are in the next class underneath that?

A. Twenty-eight or thirty, I should say. I am giving you a guess.

Q. I understand you don't have the books before you, but you are a member of the board of ASCAP?

A. Yes.

Q. And have been for some time?

A. Yes.

Q. You are one of the composer members of the board?

A. Yes.

Q. And the classifications of these various composers and writer members, it is a part of your job to fix them, I suppose?

A. Yes.

Q. What committees are you on?

A. I am on the rules committee and the audit committee.

Q. You say there are 52 of the first division and 28 of the second division, and how many of the third division?

A. It would only be a guess; I couldn't tell you.

[fol. 1069] Q. Could you give us an approximation?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial, calling for a speculation on the part of the witness.

Q. Is it a large number or a small number?

Mr. Finkelstein: Same objection.

A. It would be anything from 30 to 50.

Q. Then you come down into a class where the large number of authors and composers are grouped, do you not, and finally into a class—

A. Each class has a certain percentage.

Q. How many classes are there?

A. About sixteen.

Q. About sixteen classes? And how many composer members are there in the Society?

A. About a thousand, Joe?

Mr. Young: Yes.

A. (Continued): Yes, about a thousand.

Q. In what class are the largest number of composers and authors?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. They are pretty well distributed in all classes.

Q. You think they are pretty well distributed throughout?
[fol. 1070] A. Yes.

Q. What do the bottom ones, the lowest ones receive by way of income per annum from ASCAP?

A. There is one class that never writes, and has not written a song in twenty years, maybe more; they get \$20 a year. The bottom class and they don't write, haven't written in years.

Q. The next ones, the class above that, there is some activity there? What do they get? That shows some activity?

A. They get \$80 a year.

Q. Do you know how many there are in that class?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. How many in that class?

Q. Yes.

A. There would be a great number in that one, because all the new members that come into the Society are in that.

Q. What do you call that class; how are they designated?

Mr. Finkelstein: I object to the question as incompetent, irrelevant and immaterial.

A. Class 3.

Q. How many would you say were in Class 3?

Mr. Finkelstein: Same objection.

[fol. 1071] A. Seventy or eighty.

Q. Give us the next class, Mr. Meyer.

A. The next class is two.

Q. That is Class 2, is that right?

A. Yes.

Q. How many members in that?

Mr. Finkelstein: Same objection.

A. About the same, I guess.

Q. What do they receive?

Mr. Finkelstein: Same objection.

A. I think they get \$400 a year.

Q. About \$400 a year. Then the first class is what?

A. No. 1.

Q. And that is how many members?

Mr. Finkelstein: Same objection.

A. What do you mean? First class?

Q. You designated them No. 2, you have just testified.

A. That is where the boys start to move up.

Q. What is No. 1 paid a year?

Mr. Finkelstein: Same objection.

A. About \$800 a year.

Q. Then you come into what is the next higher class.
How do you designate that?

A. D.

[fol. 1072] Q. What do they get?

A. I don't know.

Q. Is it \$1200?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial, no foundation laid, calling for speculation.

A. Between nine hundred and a thousand dollars.

Q. And then you come into the next class. How do you designate that?

A. Double D.

Q. About what do they get; how many members in that class?

Mr. Finkelstein: I object to the question as incompetent, irrelevant and immaterial.

A. I would say about \$1200. Those figures are not authentic.

Q. We expect to check them more closely with the records of the Society if we can, but for this purpose it will do. What is the next class?

A. C.

Q. How many in the class and what are they compensated?

A. About the same, I guess.

Mr. Finkelstein: Same objection.

Q. They probably receive a little higher sum?
[fol. 1073] A. Certainly, every class gets a little more money; they get about \$1400.

Q. The next class is what?

Mr. Finkelstein: Same objection.

A. Double C. They get a percentage.

Q. Of what? Of the gross?

A. Of the gross.

Q. That is collected by the Society?

A. Yes, and that varies.

Mr. Finkelstein: Same objection.

Q. And that varies?

A. Yes.

Q. How many in that class?

Mr. Finkelstein: Same objection.

A. About fifty or sixty.

Q. And that percentage is what?

Mr. Finkelstein: Same objection.

A. It varies.

Q. What is that percentage, four, five, two?

A. It is a matter of bookkeeping.

Mr. Finkelstein: Same objection.

Q. Who fixes that amount; who fixes the percentage?

Mr. Finkelstein: Same objection.

A. The percentage was originally fixed, I guess, when [fol. 1074] they first started dividing money.

Q. Can you tell what it amounts to in dollars and cents?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. Approximately what it was last year?

Q. Yes.

A. Maybe around \$4,000.

Q. Let us get the next class; what is the next class?

A. The next class is B.

Q. How many members in that?

Mr. Finkelstein: Same objection.

A. I don't know; maybe forty or fifty.

Q. Do they also work on a percentage basis?

A. Yes.

Q. And that percentage is fixed by the Society?

A. Yes.

Q. You don't know that percentage?

A. Say between eight and nine thousand dollars.

Q. But it is based on a percentage?

A. Yes, all percentages from now on, from double C on.

Q. It is all on percentage. Does the percentage itself vary from year to year?

A. It does.

[fol. 1075] Q. They are not based on dollars and cents? In percent?

Mr. Finkelstein: Same objection.

A. Not, not in percent.

Q. What is the next?

Mr. Finkelstein: Same objection.

A. Double B is next. No, I have those figures wrong. Double B would be around \$9,000. B would be around six, between six and seven. After that comes A; A would be around twelve thousand.

Q. And double A?

Mr. Finkelstein: Same objection.

A. Double A, \$17,000; around sixteen, double A, and A was \$12,000.

Mr. Finkelstein: I move to strike out the answer, incompetent, irrelevant and immaterial.

Q. Can you give me the percentage now? I will ask that once more. I don't mean dollars and cents, but the percentage.

Mr. Finkelstein: I object on the ground it is incompetent, irrelevant and immaterial.

A. I don't know how they arrive at the percentage.

Q. Who arrives at that percentage? That is all bookkeeping. Somebody must be delegated with the authority to fix the percentage. Do you know who that is? Is it [fol. 1076] Mr. Buck, Mr. Mills, Mr. Paine?

Mr. Finkelstein: Same objection.

A. The classification committee originally and they fixed that percentage.

Q. The classification committee?

A. That started in 1921.

Q. Would you say from your experience with the Society and your knowledge of its affairs through being on its board of directors that it had a substantial number of copyrighted musical compositions that are used and sold commercially?

Mr. Finkelstein: That is objected to; no foundation laid; the question is vague and indefinite.

A. I would.

Q. Do you say that it would constitute a substantial number?

A. Yes.

Q. You have never made any personal effort, between yourself and your publisher, to sit down and figure out the public performance rights of your compositions, alone, have you?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial, and on the ground that the contract speaks [fol. 1077] for itself.

Mr. Hotz: I didn't ask him about the contract; I asked him if he had ever made any personal effort to sit down with his publisher and figure out the public performance rights.

Mr. Finkelstein: To use Mr. Nye's expression, it is speculative.

A. I have not.

Mr. Hotz: That is all.

Q. I want to ask Mr. Meyer one more question. Who is your publisher?

A. Now?

Q. Yes.

A. Nobody.

Q. You don't have anyone special?

A. No. Mr. Morris at Herms, or anyone. I go around when I have a song.

Q. You do business with a large number of publishers?

A. Yes.

Q. Those publishers with whom you do business also receive compensation for public performance rights through ASCAP?

A. Yes.

[fol. 1078] Q. Divided equally between the composers and authors on one side and the publishers on the other?

A. Yes.

Q. And the only agency that has any existence through which these public performance rights are fixed and collected is the American Society of Composers, Authors and Publishers?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial; assumes a state of facts not in evidence.

Q. Just a minute; you have confused me. —on public performance rights of copyrighted vocal and instrumental music.

A. That is the only agency I know.

Mr. Hotz: I think that is all.

(Adjourned to May 25, 1938, at ten o'clock a. m., at the same place.)

[fol. 1079] DEPOSITION OF ELLA HERBERT BARTLETT

[fol. 1080] 1450 Broadway, New York, N. Y.

May 25, 1938, 10 a. m.

Met pursuant to adjournment.

Appearances:

As before.

ELLA HERBERT BARTLETT, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Ella Herbert Bartlett, 116 East 68th Street, New York City.

Q. Mrs. Bartlett, are you the daughter of the late Victor Herbert?

A. I am.

Q. Have you any brothers or sisters?

A. I have a brother.

Q. What is his name?

A. Clifford Herbert.

[fol. 1081] Q. You and Clifford were the only children of Victor Herbert?

A. Yes, the only living ones.

Q. What was your father's occupation in his life time?

A. Composer, or shall I say musician.

Q. Is that everything that he did?

A. Composer, conductor; I suppose that about covers it.

Q. Did he follow the profession of composing music for many years?

A. Yes.

Q. Are you able to tell us, without looking at any list or document and without refreshing your recollection from any such list, the important works that your father composed?

A. The important operettas, do you mean?

Q. Yes.

A. "M'lle Modiste," "Red Mill," "Naughty Marietta," "Babes in Toyland," I am trying to remember—

Q. Would your recollection be refreshed if I show you a list of these works which appeared in your affidavit which you made in this case?

A. Yes.

Q. Will you look at this list (handing paper to the witness)?

[fol. 1082] A. Do you want the biggest ones?

Q. You may just look at this list.

A. "M'lle Modiste," "Naughty Marietta," "The Century Girl," "Old Dutch," "The Cinderella Man," "Prince

Ananias," "The Wizard of the Nile," "Serenade," "Idol's Eye," "Cyrano de Bergerac," "The Ameer," "Singing Girl," "Viceroy," "Dolly Dollars," "Babette," "Tattooed Man," "Wonderland," "It Happened In Nordland," "Song Birds," "Camille," "Prima Donna," "Red Mill," "Sweet Sixteen," "The Duchess," "Only Girl," "Princess Pat," "Enchantress," "Lady of the Slipper," "Velvet Lady," "Eileen," "The Debutante," "The Madcap Duchess," "Madeleine," "Natoma," "Sweethearts," "My Golden Girl," "Girl In The Spotlight," "Orange Blossoms," "Dream Girl," "Angel Face," "Her Regiment," "Oui Madame."

Q. Can you name a few of the shorter compositions that your father composed, or would it help you to refresh your recollection if I show you this list which I have?

A. It helps me. I know some of them.

Q. Will you please look at this list (handing paper to the witness)?

A. These are largely orchestral things, piano pieces and things of that kind: "The Whiteman Suite," "Suite Romantique," and "Suite Columbus." And then little individual numbers: "Fluerette," "Souvenir," "Sunset," "Devo-[fol. 1083] tion," "Dream On," "McKinley March," "22nd Regiment March," "The Irish Rhapsody," "Al Fresco," "Heart Throbs," "The Belle of Pittsburgh," "Badinage," "Indian Summer," "Pan Americana," "Yesterthoughts," "American Fantasie," "Valse a la Mode," "American Rose Waltz," "Christ is Risen," "Air de Ballet," "Woodland Fancies," "Punchinello," "Star Light Waltz," and "Forebodings." Of course, those are not complete.

Q. This is just a partial list of the works composed by your father?

A. Yes.

Q. Did these compositions which you have just mentioned, that is to say, the light operas, and operettas and musical comedies in the first group, and the shorter pieces in the second group, attain popularity and celebrity in their day?

A. Yes.

Q. Were they well known to the public?

A. Yes.

Q. Were any of these operettas that you mentioned in the first group successful operettas?

A. Yes, I would say most of them.

Q. Were they successful both financially and artistically?

A. Yes.

[fol. 1084] Q. Have you ever been in the State of Nebraska yourself?

A. No. I have been to California. Do you go through there then?

Q. No. Now, from time to time as your father composed these compositions and short compositions that you have mentioned, did he enter into contractual relations with music publishers for the publication of the sheet music of the compositions and of the scores of these operettas and musical comedies?

A. Yes.

Mr. Frohlich: We will offer in evidence as Plaintiffs' Exhibit 19, an agreement between Victor Herbert and M. Witmark & Sons, dated June 8, 1910, a copy of which is annexed as Schedule VI to the affidavit of Ella Herbert Bartlett verified June 8, 1937, and submitted in support of the motion for temporary injunction.

Exhibit 20 is an agreement between Victor Herbert and M. Witmark & Sons dated April 2, 1914, a copy of which appears as Schedule VII annexed to said affidavit of Ella Herbert Bartlett.

Mr. Nye: We object to the two exhibits as immaterial.

[fol. 1085] Mr. Frohlich: Will you stipulate that copies of the two contracts just described and offered in evidence, which appear as Schedules VI and VII to said affidavit, are true and accurate copies of the original contracts? I make the statement that they are.

Mr. Nye: We so stipulate.

(The copies of the two contracts just offered in evidence as Plaintiffs' Exhibit No. 19 and Plaintiffs' Exhibit No. 20, were marked accordingly.)

Mr. Frohlich: It is stipulated that the following contracts are original contracts, objection as to foundation waived:

Plaintiffs' Exhibit 21-A. Agreement between Victor Herbert and M. Witmark & Sons, dated September 6, 1898, with respect to the comic opera "Fortune Teller".

Plaintiffs' Exhibit 21-B. Agreement dated April 9, 1905, between Victor Herbert and M. Witmark & Sons, relating to musical and dramatic composition entitled "Mlle Modiste".

Plaintiffs' Exhibit 21-C. Agreement dated October 23, 1906, between Victor Herbert and M. Witmark & Sons, [fol. 1086] relating to the musical play entitled, "The Red Mill".

Plaintiffs' Exhibit 21-D. Agreement dated March 27, 1903, between Victor Herbert and M. Witmark & Sons, relating to the musical and dramatic composition entitled "Babes In The Woods".

Plaintiffs' Exhibit 21-E. Agreement dated the 16th day of —, 1919, between Victor Herbert and T. B. Harms and Francis, Day & Hunter, relating to the musical composition tentatively entitled "Little Miss Wise".

Mr. Frohlich: I offer in evidence these five contracts just described as Plaintiffs' Exhibits 21-A to 21-E inclusive.

Mr. Nye: Objected to as to materiality.

(Copies of the documents just offered in evidence as Plaintiffs' Exhibit No. 21-A to Plaintiffs' Exhibit No. 21-E, consisting of five documents, were marked accordingly.)

Q. These seven contracts that have just been received or marked in evidence as Plaintiffs' Exhibits 19, 20, 21-A to 21-E, do they represent typical contracts that were made [fol. 1087] from time to time between your father and his various publishers?

A. Yes.

Q. You are familiar with the terms of all of these contracts, all of your father's contracts?

A. I am familiar with them.

Q. "The Red Mill" was a musical comedy, wasn't it?

A. Yes.

Q. And had a long and extended run?

A. Yes.

Q. This contract, Plaintiffs' Exhibit 21-E, which refers to "Little Miss Wise", was that a tentative title?

A. Yes.

Q. Was the play produced under this contract later?

A. Yes.

Q. What was the new title?

A. "Angel Face".

Q. This contract, Plaintiffs' Exhibit 21-D, which refers to "Babes In the Woods,"—was that a tentative title?

A. Yes.

Q. Was that title later changed?

A. Yes.

Q. What was the new title?
[fol. 1088] A. "Babes In Toyland."

Q. This play, "The Red Mill," that consisted of many musical parts, didn't it?

A. Yes.

Q. There were opening numbers and opening choruses and finales and ensemble numbers throughout the play, isn't that so?

A. Yes.

Q. That division into smaller musical units is true as to every one of the musical operettas and musical comedies that your father wrote?

A. Yes.

Q. Do you know approximately how many copyrights of separate musical compositions were obtained on the "Red Mill"?

A. That one operetta alone?

Q. That one operetta alone.

A. I don't know. Offhand I would say about thirty, something like that.

Q. Would it refresh your recollection if I show you this list which you had attached to your affidavit in this proceeding?

A. Yes.

Q. Will you look at this list, Schedule I, and see if that [fol. 1089] will refresh your recollection? (Paper handed to the witness.)

A. Yes. These are all the different arrangements, too; that is the reason I didn't know; here are six arrangements for the same number.

Q. This list contains all of the copyrights obtained on the operetta "The Red Mill"?

A. Yes.

Q. Does the list include various arrangements of the same composition?

A. Yes.

Mr. Frohlich: I offer in evidence this schedule I attached to Mrs. Bartlett's affidavit in the same proceeding, being a list of all of the copyrights that were obtained on the separate compositions including all of the arrangements of those compositions from time to time on the play, "The Red Mill," deemed marked Plaintiffs' Exhibit No. 22.

Mr. Nye: To which offer it is objected as immaterial. We waive foundation.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 22, of this date.)

[fol. 1090] Q. I call your attention to the operetta "Naughty Marietta," and ask you whether that was a very successful and well known operetta of your father's?

A. Yes, very.

Q. Would your recollection be refreshed if I show you Schedule II attached to your affidavit in this proceeding, with respect to the number of copyrights that were obtained on the separate musical numbers in that play (handing paper to the witness)?

A. Yes.

Q. Does that schedule truly represent the copyrights of the various compositions and of their various arrangements?

A. Yes.

Mr. Frohlich: I will offer it in evidence and ask that it be deemed marked in evidence, this Schedule II attached to Mrs. Bartlett's affidavit, being the list of all of the copyrights obtained from time to time on the various numbers contained in "Naughty Marietta"; to be deemed marked plaintiffs' Exhibit No. 23.

Mr. Nye: Defendants waive foundation, and object to the offer as immaterial.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 23, of this date.)

[fol. 1091] Q. Was "Mademoiselle Modiste" a well known play or musical comedy composed by your father?

A. Yes.

Q. Did that likewise contain separate musical compositions?

A. Yes.

Q. Were various arrangements made from time to time of a number of those compositions?

A. Yes.

Q. Would your recollection be refreshed if I were to show you this document purporting to contain a list of the various arrangements which were copyrighted from time to time, being Schedule III attached to your affidavit in this proceeding?

A. Yes.

Q. Will you please look at this list, Mrs. Bartlett (handing paper to the witness)?

A. Yes.

Q. Does that schedule truly represent the copyrights of the various compositions and of their various arrangements?

A. Yes.

Mr. Frohlich: I will offer in evidence this schedule III and ask that it be read in evidence and deemed marked [fol. 1092] in evidence as Plaintiffs' Exhibit No. 23. The document offered in evidence is Schedule II attached to Mrs. Bartlett's affidavit on the motion for temporary injunction, being a list of the copyrights and of the various compositions and of the arrangements of a number of those compositions that were contained in the play "Mlle Modiste".

(The document just offered in evidence was deemed marked Plaintiffs' Exhibit No. 24, of this date.)

Mr. Nye: Defendants waive foundation; and object to the offer as immaterial.

Q. "Mlle Modiste" was originally copyrighted, according to Schedule III, in October, 1905; is that correct?

A. Yes.

Q. Were there from time to time renewals of various copyrights of the musical numbers contained in "Mlle Modiste"?

A. Yes, they have all been renewed.

Q. All the compositions of "Mlle Modiste"?

A. Yes.

Q. With the possible exception of some of the later arrangements that have not yet expired?

[fol. 1093] A. Yes.

Q. I show you a list purporting to be the renewals of the copyrights of a number of compositions of "Mlle Modiste," and I ask you if it refreshes your recollection and whether you can testify from your own recollection after looking at this list whether these renewals are accurate (handing paper to the witness).

A. I would say so.

Mr. Frohlich: I will offer in evidence the document entitled "Renewals of Copyrights—Mlle Modiste," consisting of two pages annexed to Mrs. Bartlett's affidavit in that same proceeding, to be deemed marked Plaintiffs' Exhibit No. 25.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

Q. I show you this document entitled "Schedule IV Red Mill," and ask you whether you can testify, looking at this document, whether or not this represents a true and correct statement of original copyrights and renewals of the musical compositions in the "Red Mill" (handing paper to the witness).

A. Yes.

Mr. Frohlich: I offer in evidence this document entitled [fol. 1094] "Schedule IV Red Mill" "Original copyrights issued to M. Witmark & Sons as trustees for Victor Herbert and Henry Blossom Jr., renewals issued to Ella H. Bartlett, Clifford Herbert and Marjorie Wilson," which is attached to Mrs. Bartlett's affidavit in the same proceeding.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

(The document just offered in evidence was deemed marked Plaintiffs' Exhibit No. 26, of this date.)

Q. Who is Marjorie Wilson, Mrs. Bartlett?

A. She is the widow of the author.

Q. Who is Henry Blossom, Jr.? He wrote the lyrics, I believe?

A. Yes.

Q. I show you this list, which is entitled "Schedule V. Babes In Toyland. Original copyrights issued to M. Witmark & Sons as trustees for Victor Herbert and Glen McDonough," and ask you whether that truly represents the list of copyrights and renewals of copyrights of the musical compositions in "Babes In Toyland"? (Paper handed to the witness.)

A. I would say yes.

[fol. 1095] Mr. Frohlich: I will offer in evidence this schedule "V" annexed to Mrs. Bartlett's affidavit in the same proceeding.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 27, of this date.)

Q. Was your father in his life time a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When did he join the Society, if you know?

A. I am afraid I don't know the date.

Q. Can you tell us approximately the year?

A. No.

Q. What year did your father die?

A. He died in 1924.

Q. After his death did you and your brother Clifford join the American Society of Composers, Authors and Publishers?

A. Yes.

Q. Have you been members of that Society ever since?

A. Yes.

Q. Have you been in receipt of any compensation for [fol. 1096] public performance for profit of your father's compositions since his death?

A. Yes.

Q. From whom have you received any such compensation?

A. From the American Society.

Q. What compensation did you receive from the Society in the year 1935? Just give us the approximate figures.

A. \$10,000.

Q. Was that money paid to you alone, or to you and your brother?

A. I would say that was about my share; I can't give it exactly.

Q. Your brother also received some compensation from the Society?

A. Yes.

Q. Did you and your brother inherit under the will of your father the various copyrights of the compositions that he had composed in his life time?

A. He left the copyrights to my mother and to me and gave none to my brother.

Q. When did your mother die?

A. In 1927.

Q. Did you inherit from your mother the copyrights that had been left to her?

[fol. 1097] A. No, she left them to my brother.

Q. Did you inherit any of them at all?

A. I had two-thirds. Father left me two-thirds of his copyrights in the will, and to mother one-third. Mother in turn left her share to my brother.

Q. So that Clifford owned one-third and you two-thirds?

A. Yes.

Q. From time to time these copyrights were renewed. In whose name were they renewed?

A. As they were renewed they were all renewed in my brother's and my names.

Q. After they were renewed did you continue to have contractual relations with various publishers to publish the musical compositions of your father?

A. Yes.

Q. Are they now being published under those arrangements?

A. Yes.

Q. Did you within recent years sell any rights in any of your father's plays, for motion pictures?

A. Yes.

Q. Will you please state what works you sold for that purpose?

A. "Babes In Toyland," "M'lle Modiste" and "The [fol. 1098] Red Mill," and "Naughty Marietta."

Q. To whom were the grand rights in "Babes In Toyland" sold?

A. We sold those to R. K. O.

Q. What did you receive as compensation for the sale of those rights?

A. \$50,000, for a lease of ten or eleven years; I don't remember exactly.

Q. To whom did you sell the grand rights in "M'lle Modiste"?

A. To Warner Brothers.

Q. What did you receive for them?

A. \$50,000, as I remember.

Q. What other plays do you remember that were sold?

A. "The Fortune Teller."

Q. To whom did you sell that?

A. To Warner Brothers.

Q. What did you get for that?

A. \$25,000 for the music alone, because they owned the book.

Q. What was the other play?

A. "The Red Mill."

Q. To whom did you sell that?

A. That was sold to Hearst; I think that was Cosmopolitan Productions at that time.

[fol. 1099] Q. What did you get for that?

A. As I remember that, it was \$50,000 on a ten-year lease.

Q. Did you sell any other plays?

A. Yes.

Q. Any to Metro-Goldwyn-Mayer?

A. Yes.

Q. What did you sell?

A. "Sweethearts."

Q. What did you get for that?

A. \$50,000.

Q. Did you sell any others?

A. "Rose of Algeria."

Q. What did you get for that?

A. The same.

Q. \$50,000?

A. Yes. And "The Red Mill."

Q. What did you get for the "Red Mill"?

A. \$50,000.

Q. To whom did you sell "Naughty Marietta"?

A. Metro-Goldwyn-Mayer.

Q. What did you get for that?

A. \$50,000. They had some sort of claim on the book, so that was the reason it was a little bit less; they had some arrangement with the author.

[fol. 1100] Q. In all of those instances where you sold these rights, were they for a limited period?

A. They all were, with the exception of three.

Q. What was the limitation?

A. They were sold on the basis of ten or eleven years, rights for ten or eleven years.

Q. When you sold these rights, just what rights did you sell?

A. The rights to make a picture, a moving picture.

Q. A moving picture of the particular play?

A. Yes.

Q. In any of those instances where you have rights to make picture versions of the play, you didn't sell the right of publication?

A. No.

Q. That has been reserved to your publisher?

A. Yes. Only the rights to make motion pictures using the book, lyric and music.

Q. From time to time have you been in receipt of royalties from the publication of the musical compositions composed by your father?

A. Yes.

Q. Have these royalties been very substantial in recent years?

[fol. 1101] A. Quite.

Q. How much did you receive by way of royalties from the sales of sheet music on all of the plays in the year 1935? Give us an approximate figure; you don't have to give us the exact amount.

A. That is, just sheet music?

Q. Yes.

A. Like my statement from Witmark?

Q. That is right.

A. I would say six or \$7,000 a year on that alone, just sheet music.

Q. Just sheet music from all of the works?

A. Yes; that is approximate.

Q. What did you receive from the same source in 1936?

A. I would say about the same; they didn't change very much.

Q. About the same in 1937?

A. Yes; I think in 1937 they were a little higher.

Q. Did you also receive in 1935 any moneys from your publishers for the mechanical reproduction of your father's works with respect to disk records and piano rolls?

A. Yes.

Q. Can you tell us approximately the aggregate of all of the moneys that you received in the year 1935 from that source?

[fol. 1102] A. I don't believe I can.

Q. Was it more than the sheet music, or less?

A. Less.

Q. Did the same hold true for 1936 and 1937?

A. Yes.

Q. The moneys that you received from sheet music and from mechanicals, was that money that came to you alone?

A. Yes, that is what I had in mind.

Q. Did Clifford Herbert, your brother, also receive moneys from the sale of sheet music and from mechanicals of these compositions in these years?

A. Yes.

Q. You have nothing to do with what he receives?

A. No.

Q. With respect to these motion picture leases which you made on five or six of the works you mentioned, did you retain all of the moneys for yourself?

A. No.

Q. Did Clifford Herbert share in some of these moneys?

A. Yes, he did.

Q. Can you tell us for the record what his share was and what your share was? You have told us he inherited your mother's share.

Mr. Hotz: She has told us it was one-third and two-^o [fol. 1103] thirds.

A. Up to the time of the renewal; after that time if it has been renewed then he gets one-half.

Q. What did you receive from the Society in 1936 as your own share?

A. Well, about \$10,000.

Q. What did you receive in 1937?

A. It has gone up a little.

Q. A little more than \$10,000?

A. Yes.

Q. You have a contract; your most recent contract with the Society was made in 1935, wasn't it?

A. Yes.

Q. Do you consider that contract of value to you?

Mr. Nye: I object to the question as calling for a conclusion.

A. Yes.

Q. Would you want that contract declared invalid and unlawful?

Mr. Nye: Objected to as calling for speculation.

A. No.

Q. A great many of your father's compositions will come up for copyright renewal in the next five or six years, [fol. 1104] won't they?

A. Yes.

Q. Are you able to give us an estimate of what you consider the value of these works to you for renewal purposes?

Mr. Nye: I object to the question as calling for pure speculation, no proper foundation having been laid.

A. Taking one operetta as an example, if I sold it for motion pictures and publishing and dramatic rights and everything, I would say at least \$100,000 each.

Q. You have had some experience in selling the rights of your published works, haven't you?

A. Yes.

Q. You have some notion of the value of those rights?

A. Yes.

Q. And you are acquainted with the values of the publication rights of these compositions?

A. Yes.

Q. As well as the values for motion picture rights?

A. Yes.

Q. Based upon your experience with respect to these rights, so far as publication and motion pictures are concerned and the royalties that you have received from the [fol. 1105] sale of those rights from time to time, is it your testimony that each of these operettas or musical comedies has a value of \$100,000 to you with respect to the renewal rights?

Mr. Nye: I object to the question as extremely leading, calling for speculation.

A. Yes; I would say of course some are more valuable than others.

Q. Striking an average?

A. Striking an average, \$100,000.

Q. When you strike an average, do you take into consideration all of these factors, your own experience, the moneys that you have received in the past?

A. Yes.

Q. You testified that from time to time you have received royalties from the sale of mechanical reproductions of your father's musical compositions by reason of phonograph records and piano rolls, is that right?

A. Yes.

Q. After you have received your renewal rights on some of these compositions, has your publisher to your knowledge granted to companies like Victor, Brunswick and other manufacturers of records and rolls the right to manufacture these compositions in like manner for the renewal period? [fol. 1106] A. Yes.

Q. Have you been receiving royalties on those rights?

A. Yes.

Q. Have you any control over the sale or disposition of the records and rolls that are sold by the manufacturers of these records and rolls?

Mr. Nye: I object to the question as calling for a conclusion.

A. No.

Q. Are you able to compel any of the manufacturers of these records and rolls to affix to the particular record or roll of your father's composition a price to be charged for the public performance for profit of that record or roll in the State of Nebraska?

Mr. Nye: I object to the question as calling for speculation and conclusion.

A. No.

Q. Would you be willing to permit the manufacturers of the rolls and records of your father's compositions to affix on such record or roll sold in the State of Nebraska any price for the public performance for profit of such composition?

Mr. Nye: Objected to as calling for speculation.

[fol. 1107] A. I wouldn't think so.

Q. Would you be willing to permit the publisher of any of your father's sheet music sold within the State of Nebraska to determine and fix a price to be charged for the use or rendition of the particular copyrighted musical composition within the State of Nebraska?

Mr. Nye: I object to the question as calling for speculation and assuming a state of facts not warranted by the evidence and the law.

A. No, I don't think so.

Q. Assuming that there are upwards of 367 places of amusement and entertainment in the State of Nebraska which use musical compositions, are you in a position to determine and fix a price on each of your father's compositions for the public performance for profit of that composition in the State of Nebraska at the present time?

Mr. Nye: I object to the question as calling for speculation, and as leading.

A. No.

Q. If you were required to determine and fix a price to be charged for the use or rendition of these copyrighted musical compositions within the State of Nebraska, particularly with respect to the public performance for profit [fol. 1108] of these compositions, would you personally be in a position to do that?

Mr. Nye: The question is objected to as calling for speculation.

A. No.

Q. What would you have to do to determine and fix the price for the public performance for profit of these compositions in the State of Nebraska?

Mr. Nye: Objected to as calling for speculation and conclusion, no foundation as to knowledge.

A. I should think I should have to have a lawyer or someone out there looking after that for me.

Mr. Nye: I move to strike out the answer as speculation.

Q. Would you have to employ somebody to look into the different establishments and give you some information in regard to them?

Mr. Nye: I object to the question as leading and calling for speculation.

A. Yes.

Q. Would you be able to determine and fix the price to be charged for all purposes and uses of your father's compositions, without some definite information with respect [fol. 1109] to the nature of these establishments in the State of Nebraska which use music?

Mr. Nye: Objected to as speculative, assuming facts not warranted.

A. No.

Q. Are you financially able to employ an investigator to look into these establishments and to see whether or not they were infringing your father's music in the State of Nebraska?

Mr. Nye: Objected to as leading, calling for speculation.

A. I wouldn't be able to pay an awful lot for it. I don't know what the fees would be.

Q. Are you financially able to pay a lawyer to bring suits for infringement in the State of Nebraska, on your father's compositions?

Mr. Nye: I object to the question as assuming a hypothesis not warranted by the evidence; speculation.

A. It is sort of a hard question to answer.

Q. I mean a good lawyer.

A. A good lawyer? Probably I couldn't afford to pay a good lawyer.

Q. Did your father ever receive any compensation in his [fol. 1110] lifetime from the public performance for profit of his copyrighted musical compositions, for the small uses, that is to say, for picture theatres, for hotels, for dance halls,—if you know?

A. Not until the American Society started to collect them.

Mr. Nye: Note my objection to the question as calling for hearsay.

Q. Did your father in his life time personally attempt to determine and fix a price for the public performance for profit of his compositions, with respect to these so-called small rights, if you know?

Mr. Nye: I object to the question as calling for hearsay and without foundation.

A. I would say no, I don't know.

Q. Are your father's compositions played at this time over the radio stations of the United States?

A. Yes.

Q. Are they played frequently?

A. Yes.

Q. You yourself have heard them?

A. Yes.

Q. Are they played on the hook-up stations of the National Broadcasting Company and the Columbia Broadcasting System?

[fol. 1111] A. Yes.

Q. Have you yourself heard them played time after time on those hook-up stations?

A. Yes.

Mr. Frohlich: I think that is all. You may examine.

Cross-examination.

By Mr. Hotz:

Q. Mrs. Bartlett, where do you live?

A. In New York City.

Q. Where does Clifford live, your brother?

A. No place in particular; he travels around; he has no home.

Q. Where was your father born?

A. In Dublin.

Q. Was he an Irishman by birth?

A. By birth.

Mr. Frohlich: I meant to ask one or two questions on citizenship. May I ask them now?

By Mr. Frohlich:

Q. Was your father a citizen of the United States?

A. Yes.

Q. Are you a citizen of the United States?

A. Yes.

[fol. 1112] Q. And were you born here?

A. Yes.

Q. Is that true of your brother Clifford?

A. Yes. My father became a citizen, I think, within two years after he got here—immediately took out papers.

By Mr. Hotz:

Q. There is a distinction, of course, between music that is written for plays, for example, operettas, musical plays of all sorts such as "The Red Mill" and others, and the individual pieces or songs that have been composed, is there not?

A. Yes.

Q. The American Society of Composers, Authors and Publishers have nothing whatever to do with the public performance rights of those operettas and plays; they don't have anything to do with them, do they?

A. You mean when they are broadcast?

Q. No, for public performance rights.

A. You mean if they were given on the stage, for instance, or something like that?

Q. That is a matter that you handle through your publisher?

A. No, I don't handle that through the publisher; we handle that through the Library, the Witmark Harms [fol. 1113] Music Library. I will explain that to you. In St. Louis they have an operetta during the summer, and they do, say, "The Red Mill" for a week; they pay so much to the Library and then it is divided between us. The American Society has nothing to do with a performance like that.

Q. That is what I meant. The American Society of Composers, Authors and Publishers have only to collect for public performance rights of the vocal and instrumental compositions where the individual song is sung or played?

A. I believe that is right.

Q. It is over that source that you have delegated and given full and complete authority to the American Society of Composers, Authors and Publishers in reference to those matters, isn't that right?

A. Yes.

Q. You have delegated and given to the American Society of Composers, Authors and Publishers the right to fix and determine the prices that are to be charged to the users of that style of musical compositions, copyrighted musical compositions, isn't that true?

A. Yes.

Q. You have no control over that?

A. No.

Q. They do that?

[fol. 1114] A. Yes.

Q. You receive as pay and compensation from the American Society of Composers, Authors and Publishers a fixed sum in accordance with the classification that you have been assigned to by the Society?

A. Yes.

Q. You know what your classification is, how it is described or designated?

A. Yes, double A, that is the top.

Q. That is the top?

A. Yes.

Q. From some of the other witnesses, composers and song writers that have testified here, they have told us that the popular music such as they write has a short life, probably four months.

A. Yes.

Q. And that the sales of musical compositions fell off materially and that their income from their publishers has dropped down considerably, that is, based on the royalties they received from the publishers.

A. Yes.

Q. In your case I notice they have not fallen off.

A. We were speaking from 1935 on; but I would say, from father's life time they were down, but I would say [fol. 1115] that the difference is that it is more or less like classical music; it is not like popular songs that last a short time.

Q. It is what you call standard type rather than the popular type?

A. Yes.

Q. In reference to these sums of money that you testified that you received from R. K. O., Warner Brothers, Hearst organization, Metro-Goldwyn-Mayer and various other picture concerns from time to time you have received from twenty-five to \$50,000; the American Society of Composers, Authors and Publishers have nothing to do with that, either?

A. No.

Q. Is that all individual contracts and arrangements that you have made between yourself, your publisher and those users?

A. Yes, they are individual contracts; the publisher doesn't share.

Q. Then the publisher does not have anything to do with it?

A. No.

Q. Who fixes that?

A. When Mr. Burkan was alive it was Mr. Burkan's idea to give a ten-year lease instead of selling them outright; [fol. 1116] we have followed that plan.

Q. Your attorney is Mr. Frohlich, now, this firm here?

A. Yes.

Q. And they attend to those matters for you?

A. Yes.

Q. So far as the legal end of it is concerned?

A. Yes.

Q. You have never read this bill out in Nebraska to know what the bill contains, I suppose?

A. No, I have not.

Q. You have not inquired into the problems out there that the users have had with the American Society of Composers, Authors and Publishers?

A. I just heard about it in a general way.

Q. Just in a general way?

A. Yes.

Q. Do you know that one of the features of that bill out there is that there has been a claim made that confusion has arisen in connection with the fixing of public performance rights, that is, the amount that should be paid by the small user, hotel, dance hall, restaurant and so forth, and that the American Society of Composers, Authors and Publishers fixed different sums to be paid, and that the bill [fol. 1117] out there is seeking to remedy that situation?

A. I just knew that was what they wanted to do.

Q. In connection with the mechanical rights, that is, the portions of music that are owned and controlled by you and your brother where there are records and rolls, that is handled, is it not, under a special contract by which a certain number of cents per roll or record is given to you?

A. Yes.

Q. Right at the time?

A. Yes, through the publisher.

Q. Through the publisher?

A. Yes.

Q. You divide that by arrangement between yourself and the publisher?

A. Yes.

Q. And your income, then, is based upon the number of records or rolls that are manufactured?

A. Yes.

Q. And in connection with the radio, the broadcasting, do you have any special contract with the National Broadcasting Company?

A. No.

[fol. 1118] Q. You have none with the Columbia?

A. No.

Q. And none of the net works?

A. No.

Q. The public performance rights in connection with music, copyrighted vocal and instrumental music in which you are interested, that is handled through ASCAP, is it not?

A. Yes.

Q. And after these records and rolls are bought and paid for by having a certain amount paid by the manufacturer that is all the further interest that you have, except the division of the money between yourself and your publisher in accordance with your contract, is that right?

A. Yes.

Q. In connection with the matter of sheet music, where it is used by individuals and firms in Nebraska for public performance rights, have you ever attempted to sit down with your publisher and figure out a sum of money that could be obtained at the time that music was sold that would include the public performance rights, so that would end it right there at the time the music was sold or purchased?

A. No.

Q. You have never done that?

[fol. 1119] A. No.

Q. You know the number of copies that have been sold, do you not?

A. Yes.

Q. And you know that from the fact that you collect royalties on the sale price?

A. Yes.

Q. Just generally, what are some of those; what division do you make?

A. Do you mean to take one number, for instance "Kiss Me Again" from "M'lle Modiste"?

Q. Yes. What would you say was your average royalty from sheet music?

A. On this one number?

Q. The average on sheet music that is sold?

A. I would say five or six thousand dollars.

Q. Translating that into percentage, two, three, four, five cents, what would it average?

A. On the sheet music most of the contracts are alike; I get three cents on each copy that is sold. Is that what you mean?

Q. Yes, that is what I mean.

A. Three cents on each copy.

Q. Having received \$6,000 a year from that source, as [fol. 1120] suming that you get three cents from each copy—I am trying to get at the number of copies in that way.

A. It is only on the sheet music we receive three cents. If it is an arrangement we get different—probably fifteen per cent or ten per cent of the price.

Q. Now, on the arrangements, by that you mean orchestration?

A. Yes.

Q. Arrangements for bands?

A. Yes.

Q. And the additional fee is charged of fifteen cents instead of three cents, you know that those are for public performance, do you not?

A. Yes.

Q. That the arrangement is made for public performance?

A. Yes.

Q. You have never attempted to work out for your publisher at the time that you fix those sums for the orchestration and getting up works for public performance, you have never attempted to arrange with your publisher, or discuss the matter of having included therein a fee that would also cover public performance rights?

A. No.

Q. If you did do that and if you were able to obtain [fol. 1121] an agreeable sum that you and your publisher agreed upon, that would compensate you, would it not, for public performance rights, if it was satisfactory and the user paid the price?

A. I don't see how they could agree upon it.

Q. If you and your publisher arranged a certain sum, you would know that based upon the number of copies that were sold you would know what you were going to receive, would you not, in dollars and cents?

A. I don't see how you could figure it ahead like that. To use a word that has been used so often, I would say it was highly speculative.

Q. For instance, in receiving \$6,000 for your sheet music at three cents a copy, that would anticipate two hundred thousand copies; am I right on that?

A. I think so.

Q. Suppose you have included in there another three cents for public performance rights, you would know that you were going to receive \$6,000 for public performance rights, would you not, from the users, and you would get it right directly from your publisher the same as you do the royalty for three cents?

A. I don't know; I don't like that.

Q. You are not prepared to answer?

[fol. 1122] A. I don't like that.

Q. You don't like the idea. But nevertheless you don't mean to say that it could not be done if you and your publisher sat down and tried to work it out; you wouldn't want to go on record as saying that it could not be done?

A. I would almost say that.

Q. You have a record, have you not, of all of the numbers of pieces, vocal and instrumental music, upon which your father had obtained copyrights, from your publisher; they are all available?

A. Yes.

Q. He renders you a statement semiannually or thereabouts?

A. Yes.

Q. Showing the number of pieces that have been sold?

A. Yes.

Q. And it is upon that that your royalties are based?

A. Yes.

Q. Do you remember back as far as the case that your father had against Shanley, Victor Herbert against Shanley?

A. No.

Q. Or how it arose, or the circumstances?

A. No, I reall- do not.

[fol. 1123] Q. Who is your publisher, mostly?

A. Witmark published most of the things, but Schirmer also published a great many.

Q. G. Schirmer?

A. Yes. M. Witmark & Sons.

Q. Aside from Schirmer, those are all part of the Warner organization, are they not?

A. There are also other publishers. Walter Fischer, he published quite a few.

Q. They are all members of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. And of course you are a member?

A. Yes.

Q. Is your brother Clifford?

A. Yes.

Q. I don't believe you are on the board of directors, are you?

A. Am I?

Q. Yes.

A. No, I am not.

Q. You know, do you not, that the American Society of Composers, Authors and Publishers have delegated to them by you and others the public performance rights, that is, [fol. 1124] the handling of the public performance rights?

A. Yes.

Q. You know that?

A. Yes.

Q. And you are also familiar with the fact, I think you told me before, they are authorized to fix and determine the fee or license that was fixed for public performance rights of copyrighted musical compositions in the State of Nebraska?

A. Yes.

Q. Is it your observation as member of the American Society of Composers, Authors and Publishers or do you know where there was any dissatisfaction among the composers and authors in reference to the classifications in which they were placed?

Mr. Frohlich: I object to the question as incompetent, irrelevant and immaterial, hearsay and speculative.

Q. If she knows.

A. I really don't know.

Q. You couldn't answer that?

A. No.

Q. Who owns the copyrights on the musical compositions that formerly were your father's?
[fol. 1125] A. My brother and I.

Q. Have you assigned them to your publisher?

A. Assigned the publishing rights.

Q. To the publisher?

A. Yes.

Q. And you are paid for that assignment of those rights and the renewals, a certain royalty on each and every copy that is sold?

A. Yes.

Q. And that is covered by your contracts that are in evidence; I presume they are, are they not?

A. Yes.

Mr. Frohlich: They are all covered by the contracts.

Q. And in turn the publisher, by and with your consent and your brother's consent, has delegated to the American

Society of Composers, Authors and Publishers the complete and final authority in connection with the public performance rights of the copyrighted vocal and instrumental musical compositions?

A. The small rights.

Q. And the fixing of the fees and licenses therefor?

A. Yes.

Q. And that is universally the custom with persons who [fol. 1126] are the writers and owners of musical compositions in New York?

A. Yes.

Q. And with the publishing houses?

A. Yes.

Mr. Hotz: I think that is all.

[fol. 1127] DEPOSITION OF WILL VON TILZER

[fol. 1128] WILL VON TILZER, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Will Von Tilzer, 1619 Broadway, New York City.

Q. Mr. Von Tilzer, what is your occupation?

A. I am in the publishing business.

Q. Music publisher?

A. Yes.

Q. How many years have you been in that business?

A. Since 1914.

Q. You are a brother of Harry Von Tilzer?

A. Yes.

Q. He is a well known songwriter and composer?

A. Yes.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. When did you first join that Society?

A. 1914.

Q. And you have been continuously a member of that Society since 1914?

[fol. 1129] A. With the exception of one year and nine months.

Q. What was that year?

A. That was 1919 into the year 1921.

Q. Since 1921 you have been continuously a member of the Society?

A. Yes.

Q. Each five years have you entered into an agreement with the Society?

A. Yes.

Q. Similar to the latest agreement of 1935?

A. Yes.

Mr. Frohlich: I presume that is in evidence by stipulation?

Mr. Nye: Yes.

Q. Where is your business located?

A. 1619 Broadway.

Q. How do you acquire the rights under which you publish musical compositions?

A. Under contracts with writers.

Q. And the composers?

A. Authors and composers.

Q. Have you with you any typical or representative contract that you use?

A. Yes.

[fol. 1130] Q. May I see it?

A. I have two, covering different periods; one was used from 1914 until the time of the uniform contract (producing papers).

Q. You have produced one contract which is entitled Standard Uniform Popular Songwriters Contract, which is dated April 27, 1934, between Broadway Music Corporation —by the way, that is the name of your company?

A. Yes.

Q. —and Allan Flynn, on a composition, "Be Still My Heart".

A. Yes.

Mr. Frohlich: It is stipulated that that contract is identical with the contract in evidence, Plaintiffs' Exhibit 3.

Q. You have also produced a contract between the Broadway Music Corporation and Charles McCarron and another, on a musical composition, "When The Sun Goes Down In Tennessee And The Moon Begins To Rise," dated January 16, 1917. Are the signatures at the foot of the contract the signatures of the parties to the contract just mentioned?

A. Yes, that is right.

Q. Is that contract typical of the contracts at or about that period?

[fol. 1131] A. Yes.

Q. And for some years succeeding that period?

A. Yes.

Mr. Frohlich: I offer it in evidence.

(The paper just offered in evidence was marked Plaintiffs' Exhibit No. 28, of this date.)

Mr. Frohlich I assume that we have the right to substitute photostatic copies in place of these original exhibits?

Mr. Nye: We are not going to object to the photostating of the exhibits so long as we can read the photostats.

Q. Now, Mr. Von Tilzer, you have had a great deal of experience in publishing music over these years?

A. Yes.

Q. And you are personally acquainted with a great many writers and publishers throughout the country?

A. Most of them.

Q. Prior to the time that you joined the American Society did you or your company ever receive any compensation for the public performance for profit of any of your compositions?

A. No.

[fol. 1132] Q. When for the first time did you receive any moneys or compensation for the public performance for profit on your compositions?

A. From the American Society? I think it was around 1921 or 1922; I don't remember the time; it was around that time.

Q. About 1921 or 1922?

A. I think it was around that time when it first declared a dividend.

Q. Have you been receiving compensation from the American Society since that time?

A. I have.

Q. Is that the only source from which you receive compensation for the public performance for profit of your musical compositions?

A. Yes.

Q. How much did you receive from the Society in 1935, approximately?

A. I received approximately twenty-three or \$24,000.

Q. How much did you receive from the Society in 1936?

A. I would like to say around those three or four years, at that time, it was approximately about \$24,000.

Q. 1935, 1936, 1937, average about 24 or \$25,000?

[fol. 1133] A. It averaged about \$24,000.

Q. When you publish a musical composition do you in many instances make a contractual arrangement with manufacturers of records and piano rolls for the mechanical reproduction of those compositions on records and rolls?

A. Yes.

Q. And you are paid by those manufacturers for the records and rolls that they manufacture?

A. That is right.

Q. Have you with you a typical contract form that you give to those people?

A. No.

Q. When you give a manufacturer of rolls and records the right to manufacture and sell those rolls and records, he from time to time issues a statement to you and sends you checks for the number that he sells?

A. That is right.

Q. Do you give such manufacturer of rolls and records any right of public performance for profit with respect to such rolls and records?

A. I do not.

Q. Would you ever give or want to give such manufacturer such rights?

[fol. 1134] Mr. Nye: I object to the question as calling for speculation.

A. My answer is no, emphatically no.

Q. Have you any control over the sale of those records and rolls which are manufactured by the particular manufacturer with whom you contract?

Mr. Nye: Objected to as calling for a conclusion.

A. To the best of my knowledge we have. I don't believe that the law has given us that protection, but it is my under-

standing that in a contract for a specific purpose that you only give them those rights and not the other rights.

Mr. Nye: I move to strike out the answer as stating a conclusion.

Q. Have you any contractual arrangement with any manufacturer of rolls or records of your compositions under which you can compel him to determine and fix the price within the State of Nebraska for the public performance for profit of the rolls and records that he sells in the State of Nebraska?

Mr. Nye: I object to the question as calling for a conclusion; not the best evidence.

A. I don't know the law there. I would like to have such an arrangement in our contract. I see why you wanted [fol. 1135] the contract here. I am sorry I haven't a specimen contract we make.

Q. Would you be willing to permit a manufacturer of your rolls and records to determine and fix a price to be printed on the particular rolls or records of your compositions under which he fixes the price for the public performance for profit of that roll or record within the State of Nebraska?

Mr. Nye: I object to the question as calling for speculation, assuming in the hypothesis facts not warranted by the record.

A. I would not.

Q. Would you be willing to permit any manufacturer of rolls or records of your compositions to act as your agent in the State of Nebraska in order to fix and determine the price to be charged for the public performance for profit of your compositions in the State of Nebraska?

Mr. Nye: Same objection.

A. I would not.

Q. Assuming that there are 367 places or establishments in the State of Nebraska which use copyrighted musical compositions for public performance for profit, would you be able to determine and fix the price for the public performance for profit of your compositions with respect to [fol. 1136] those 367 users in the State of Nebraska?

Mr. Nye: Same objection.

A. I don't think it would be possible for us to do it.

Q. If you were going to determine and fix a price for the public performance for profit of your compositions in the State of Nebraska, would you be required to obtain information with respect to the nature and size of the various establishments in Nebraska that used your music?

Mr. Nye: Same objection; and that is is leading.

A. Absolutely.

Q. Would you be able to obtain data and information with respect to the 367 establishments in the State of Nebraska without being required to employ someone in the State of Nebraska to make inquiry in your behalf?

Mr. Nye: Same objection.

A. No.

Q. You have over the years employed people in your establishment that are skilled in music?

A. Yes.

Q. What would you have to pay to some man in the State of Nebraska to go around to each of the establishments using your music and obtain the information with respect to the nature and extent of these establishments?

[fol. 1137] Mr. Nye: I object to the question as assuming facts not in evidence, speculative, no foundation.

A. I would say between one hundred and two hundred dollars a week to get a man I deem capable of giving me that information.

Q. Would you have to employ somebody in the State of Nebraska for the purpose of detecting infringements of your compositions in that State?

Mr. Nye: Same objection.

A. I would say so.

Q. Would the person you would employ have to be skilled in music?

Mr. Nye: Same objection.

Q. What do you think you would have to pay such a person?

Mr. Nye: That is objected to as having no foundation and speculative.

A. I should say such a man, a capable man to do that sort of work, would cost not less than \$100 a week.

Q. Would you be compelled to employ a lawyer in the State of Nebraska to bring infringement suits on your behalf against infringers?

Mr. Nye: Objected to as calling for conclusion.

[fol. 1138] A. It seems that that would follow naturally.

Q. What do you estimate that you would have to pay a lawyer?

Mr. Nye: Objected to, no foundation, conclusion.

A. My experience doesn't put me in a position to estimate the cost of the legal end.

Q. Do you feel that you are financially able to employ investigators and an attorney in the State of Nebraska to protect you against infringements of your compositions in that State?

Mr. Nye: I object to the question as calling for a conclusion, and assuming facts not warranted by the evidence.

A. I am not.

Q. Have you in the course of your career as a publisher published so-called hit songs?

A. Many of them.

Q. Can you tell us the names of a few of the more important hits that you published?

A. Yes. "You Made Me Love You," that was my first hit, in 1914. "I May Be Gone For A Long Long Time," "My Little Girl," "Old Frenchy," "I Used To Love You But It's All Over Now," "Dapper Dan," "I'll Be With [fol. 1139] You In Apple Blossom Time," "Chile Bean," "Oh By Jingo," "Muddy Water". Do you want them all, or is that enough?

Q. Just a few.

A. That is a representative bunch.

Q. Did any of these songs sell as many as a million copies?

A. Yes.

Q. Which ones?

A. "My Little Girl" was over a million.

Q. When was that published?

A. Off hand I should say about 1917; it may have been 1918; I can't say for sure.

Q. For how long a period was it popular?

A. That song? You picked a song that has an interesting story. I remember it because it was peculiar. At that time, that period in the history of our industry—do you want that story?

Mr. Nye: I don't think you need to write it down.

Mr. Frohlich: Keep it off the record.

(Statement by witness, off the record.)

Q. For how long a period was "You Made Me Love You" popular?

A. Close to a year, and it kept on selling in the following year.

[fol. 1140] Q. For how long a period were these other songs popular?

A. About the same; they averaged a year of very good sale and then tapered off for another year; they wouldn't drop off at once, just taper off gradually.

Q. So that a popular song was popular for a year and then tapered off for the following year?

A. Yes. It was a real means of support for the following year.

Q. Were there many hit songs that sold over a million copies all over the country?

A. Every year there were three or four songs that ran a million copies.

Q. Were there any that sold more than a million copies?

A. Yes, three or four.

Q. What was a hit song that you had within the last four or five years?

A. I had two in 1934. One song that was acknowledged as the top song of the year, called "Be Still, My Heart;" it had a wonderful and record popularity, stood way out, and was acclaimed by other writers as well as critics as being one of the best songs of that period.

Q. How many copies of that song did you sell?

A. Somewhere between eighty and ninety thousand.

[fol. 1141] Q. How long was the song popular?

A. I think that ran a little bit longer than the average does at this time. I think it was five or six months, because we were not a big organization at that time and the general activities were not so great.

Q. What was another song that you had in 1934?

A. "Believe It, Beloved;" that was outstanding.

Q. How long did that continue its popularity?

A. About four months.

Q. How many copies were sold?

A. 64,000.

Q. Have you had any hit songs after that period?

A. No; I have had songs that were played and that sold a number of copies. I had a song in the first part of 1937; it was popular as far as playing.

Q. What is the name of it?

A. "The Mood That I Am In."

Q. Was that played extensively over the radio?

A. Yes.

Q. Did you sell many copies?

A. Four or five thousand copies.

Q. For how long a period was it played over the radio?

A. For about three months.

Q. With your knowledge, experience and background as [fol. 1142] a music publisher for this period, to what do you attribute the falling off in sales of sheet music, of popular compositions, in recent years?

• Mr. Nye: I object to that as calling for a conclusion, wholly immaterial, and calling for speculation; no foundation.

A. I can make the mere statement that it is radio. I can go on and take an hour of time and show why.

Q. Just tell us in a few words what happens to a musical composition today, particularly with respect to the manner in which radio plays it.

Mr. Nye: I object to the question as calling for a conclusion, no foundation, improper form of hypothetical question.

A. Obviously I should say to anyone that knows music and knows the field, that when radio takes hold of a song if they like it at all people get so much of that number that it has the same effect on the public that a wonderful dish of food would have if you ate it every day three times a day; they get tired of it; they are satiated with it. That is what has been happening to music for some years now.

Q. Has there been a diminution or falling off in the sales of your sheet music for the last ten or twelve years?

A. So much so, Mr. Frohlich, that a year ago this last [fol. 1143] April our concern finally came to the conclusion that it is almost useless, with our knowledge of the business and all, for us to put out these new popular songs. We are giving most of our time today to our standard works, songs that have been big hits in the past. Because, as in the case of this song, "The Mood That I Am In," we had had to spend a great deal of money and effort, and it works out selling four or five to ten thousand copies, which means a loss to such an extent that when you pay royalties on the song you are paying an additional loss on top of your original.

Mr. Nye: I move to strike out the answer as not responsive.

Q. Is that situation true with respect to popular music generally in the industry?

Mr. Nye: Objected to as calling for speculation.

A. That is my belief. I don't think that any of the publishers are making any money today.

Mr. Nye: I move to strike out, "That is my belief."

Q. Do you know of any music that sold as many as ten million copies?

A. No, I don't know of any one song.

[fol. 1144] Q. Could you continue the operation of your business if you were not in receipt of moneys from the American Society of Composers, Authors and Publishers?

Mr. Nye: The question is objected to as calling for conclusion and speculation.

A. Positively not.

Q. Your contract with the Society is valuable to you?

A. It is the only thing we have in the business of any consequence.

Q. How much do you think that contract is worth to you in dollars and cents?

Mr. Nye: Objected to as calling for speculation and conclusion, no foundation having been laid.

A. The only way I can answer that intelligently would be to say that I can only base the value of my business upon my receipts from the Society.

Q. Using that as a basis, what do you think your contract is worth to you?

Mr. Nye: Same objection.

A. Would that mean what I think my business is worth to me, would it mean that?

Q. What is this American Society contract worth to you today, in dollars and cents?

[fol. 1145] Mr. Nye: Same objection.

A. Conservatively, I would say \$250,000.

Q. This last contract that you made in 1935 is the last of similar contracts made each five years?

A. Yes.

Q. If this American Society of Composers, Authors and Publishers is to continue, is there a reasonable expectation that you will enter into future contracts for five-year periods similar to the one now in existence?

A. That is right.

Q. Would you be willing to have your contract with the American Society of Composers, Authors and Publishers declared void and illegal?

Mr. Nye: Objected to as calling for speculation.

A. My answer to that would be that it would put me out of business.

Q. Would you be willing to have it declared void?

Mr. Nye: Same objection.

A. No, I would not.

Q. Do you publish any compositions that are used in productions on the stage?

A. I think it was around 1919, I think we had some production numbers at that time.

[fol. 1146] Q. When you publish a song at the present time, or at any time when you publish a song, are you able to tell immediately upon publication of the song whether it is going to be popular or not?

Mr. Nye: Objected to as calling for a conclusion.

A. My answer is no.

Q. If you were required to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions in the State of Nebraska on each

composition that is sold in that State, for all uses and purposes including public performance for profit, could you determine at that time when the composition is first sold in the State of Nebraska what price you could charge for public performance for profit, this price to be fixed for the complete length of the copyright of the composition?

Mr. Nye: I object to the question on the ground that it calls for a conclusion, and as hypothetical, assuming facts not warranted.

A. I believe that an answer to that question would be impossible, an intelligent answer.

Q. If you published a song and sold it for the first time today in the State of Nebraska, could you determine and fix a price to be placed on that song for television rights [fol. 1147] within that State?

Mr. Nye: I object to the question as calling for speculation.

A. I would be unable to.

Q. Do you know at the present time what value television may have in respect to your copyrighted musical compositions in the future, in the State of Nebraska?

A. No, I do not.

Mr. Nye: Same objection.

Q. Are you able to obtain data or information from any source that will help you to ascertain such value?

Mr. Nye: Same objection.

A. I am not.

Q. Could you tell today when you publish a composition in the State of Nebraska what value to fix on your composition for public performance for profit with respect to the hotels in the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion.

A. Do you mind asking that question again? (The pending question was read by the stenographer.) I would not be in a position to do that.

Q. Can you now, if you publish a composition in the State of Nebraska, determine and fix the price to be charged [fol. 1148] for the purpose of public performance for profit

of that composition for the full twenty-eight years of the copyright of the composition and the renewal period of twenty-eight years?

Mr. Nye: Same objection.

A. I would not be able to do so.

Q. Could you do it at any time?

Mr. Nye: Same objection.

A. No.

Q. Have you sold many of your compositions in the State of Nebraska over these years that you have been a publisher?

A. I think I can say safely I have. My answer is yes.

Q. Have you any office in the State of Nebraska, any branch office of your own?

A. We have not.

Q. Have you any agent or representative in that State?

A. The answer is no.

Q. How do you sell your sheet music in that state?

A. I should say that our music is sold through the jobbers in that State, music jobbers.

Q. When you sell your sheet music to jobbers and dealers in the State of Nebraska, have you any further control over [fol. 1149] over the sale or disposition of that music or copies of the musical compositions that you sell?

Mr. Nye: Objected to as calling for a conclusion; not the best evidence.

A. The jobbers are not in Nebraska; they are in other sections of the country, and then their representatives—

Q. Do you know of your own knowledge whether any of your music has ever been sold by jobbers to dealers within the State of Nebraska?

A. Yes, I am quite sure of that. I say yes to that.

Q. Are copies of the sheet music of your compositions on the shelves of dealers, let us say, in Omaha in the State of Nebraska at the present time?

A. It is possible. I couldn't say with any degree of authority that that is so at this time, in view of the fact that we have no current song, as I stated earlier.

Q. Would you be in a position to go to a dealer or jobber in the State of Nebraska who has your music and compel

him to fix a price on that music for public performance for profit of your compositions in the State of Nebraska?

A. I would not.

Mr. Nye: I object to that; calls for conclusion; no foundation.

Q. Has your music been performed within the State of [fol. 1150] Nebraska over the last fifteen or twenty years?

Mr. Nye: I object to the question on the ground that there is no foundation laid.

A. Yes.

Q. Have you yourself ever been in the State of Nebraska?

A. Many years ago, over twenty years ago.

Q. Did you hear any of your music performed in that State when you were there?

A. No, I went through there too rapidly; I was on a sales trip at that time.

Q. During the past ten years has your music been performed over radio stations in the United States?

A. Yes.

Q. Have you heard it performed over the National hook-up on the National Broadcasting stations?

A. Yes.

Q. Have you heard it performed on the national hook-up of the Columbia Broadcasting System?

A. Yes.

Q. How was sheet music sold prior to 1922?

Mr. Nye: Objected to as to form; immaterial.

A. In those days a good song, even though it was not exploited very often sold over a hundred to 300,000 copies [fol. 1151] without a penny being spent in exploitation. That is history. It can be proven that there were hundreds and thousands sold at those figures. It seems to me that the point was that the public were buying music in those days instead of listening to music.

Mr. Nye: I move to strike out the answer as not responsive.

Q. Is the public buying music today?

A. If we depended on the sale of music we would be out of business.

Q. Does that hold true of the other publishers in the United States?

A. Yes, that is true, with the exception of standard works, standard and classic.

Q. Taking the public by and large would you say that held true?

A. Yes.

Q. If it were not for the moneys derived from public performance for profit, would any of these popular publishers be in business today?

Mr. Nye: Same objection.

A. I don't think they could continue; I know we could not.

Q. How about your receipts for mechanical reproduction of records and rolls, has there been any falling off or [fol. 1152] diminution in the revenue received from that source within the past ten or fifteen years?

A. The history of the decline of the mechanical values is practically the same as sheet music.

Q. What did you receive on the compositions that you sold, that was a hit, and sold a million copies?

A. "You Made Me Love You"?

Q. What did you receive for the mechanical rights?

A. I couldn't say offhand, but I do know that around 1918, 1919 and 1920 that it was a very important phase of the business; it was a common occurrence for us to receive as much as eighteen to \$20,000 in one quarter, from the Victor and also from the Columbia Phonograph Company, just one quarter.

Q. On a hit number?

A. On a catalogue, on numbers current at that time; that was the money we were getting at that time.

Q. Has that fallen to any extent in recent years?

A. It has fallen to nothing, practically.

Q. What did you get in 1937 from all sources for your mechanical rights on all of your compositions?

A. Here are some figures for you, if you care to look at them (producing paper). For the years 1934, 1935, 1936 and 1937.

[fol. 1153] Q. I will ask you about them. You have given me a tabulation of some figures that you have prepared, showing gross amounts received by your company from

sheet music and mechanical reproduction for the years 1934, 1935, 1936 and 1937. Have you a duplicate of that with you?

A. Yes (producing paper).

Q. What did you receive in 1934 from all sales of your sheet music?

A. \$21,237.64.

Q. What did you receive from mechanical returns, which would include, I presume, piano rolls as well as records?

A. \$1,244.71.

Q. What did you receive for the year 1935 from the gross sales of your sheet music?

A. \$33,822.76.

Q. What did you receive from mechanical reproductions that year?

A. \$1,658.04.

Q. What did you receive from the sale of sheet music all told, on all your compositions, in 1936?

A. \$11,461.95.

Q. What did you receive for mechanical reproductions that year?

[fol. 1154] A. \$4,310.48.

Q. What did you receive from the sales of sheet music in 1937?

A. \$3,833.16.

Q. What did you receive from mechanical reproductions that year?

A. \$2,456.46.

Mr. Frohlich: You may examine, Mr. Hotz.

Cross-examination.

By Mr. Hotz:

Q. Isn't the falling off in the sheet music business from 1935, which was \$33,000, down to \$3,000 in 1937, due to the fact that they were not producing popular hits?

A. I don't think that was the reason.

Q. It did have an effect, didn't it?

A. Will you ask that question again? I want to be sure I get you right. (The pending question was read by the stenographer.) No, that was not the reason. The reason was that we were losing money on songs we were publishing. While the gross sales during the years 1934 and 1935

were much greater than the gross sales of 1936 and 1937, that was not due to paying us with the business we were doing. It was because of the fact that we were trying to make a go of the thing and, as the last figure which we do [fol. 1155] not use here shows, we were showing losses in our company, and we got tired after a while of putting all this energy and effort back of it and ending up with a loss.

Q. The public were not satisfied to buy this music; that is what it amounts to; the sheet music that you were offering for sale?

Mr. Finkelstein: That is objected to as argumentative.

A. That is not how we feel about it; we feel we had good songs.

Q. The fact remains that the public were not buying them or else your gross sales would have been up if you were getting your share of the business, that is obvious?

A. Against that I would like to offer—

Q. Answer the question, if you can.

A. It is hard to answer it by yes or no. In fact there is no direct answer to it. During those years we had the twenty-one and \$33,000 sales and we lost money. In consequence the following years we went down because it was unsatisfactory. We didn't put the effort behind our exploitation.

Q. During the years you have just testified to, 1934, 1935, 1936 and 1937, would you say that your publishing house produced what is usually termed a hit in popular music? [fol. 1156] A. During the years 1934 and 1935 the answer is yes, but the results were not hit results.

Q. In 1936 and 1937 you did not produce any hits?

A. Apparently it didn't turn out that way.

(Adjourned until two o'clock p. m.)

(After Recess) . . . 2 p. m.

WILL VON TILZER, resumed:

Cross-examination (continued).

By Mr. Hotz:

Q. Mr. Von Tilzer, what is the name of your firm?

A. Broadway Music Corporation.

Q. You are the President of it?

A. Yes.

Q. How long have you been operating under that name?

A. Since 1914.

Q. A stock company, I presume?

A. Corporation.

Q. A New York corporation?

A. Yes.

Q. Headquarters here in the City?

[fol. 1157] A. Yes.

Q. You are a stockholder in it?

A. Yes.

Q. A substantial one?

A. Yes.

Q. You spoke about phonograph records or records and rolls. The term has been used frequently throughout the taking of this deposition as "records and rolls." I wish you would explain to us, no other witness has, just the process that is used in the manufacture of records and rolls, without going into the technical and scientific method of their production; but tell us with whom you dealt and the name of the concern and your general arrangements with them.

A. The principal record companies are R. C. A. Victor,—

Q. Located where?

A. Headquarters, New York offices. Camden, New Jersey, is the manufacturing plant; New York office, 153 East 24th Street. There is Decca Record Corporation, and there is American Record Corporation.

Q. Give us the address of those.

A. Decca is 50 West 57th Street; American Record Corporation, 1776 Broadway; Brunswick Record Corporation, 1776 Broadway, and Columbia Phonograph Company, same [fol. 1158] address. The music roll companies, there are very few left. There is one, Q-R-S was on 138th Street in the Bronx; those are music rolls, Q-R-S.

Q. Those concerns go around to the different music publishing houses, such as yours, and go over your catalogue and pick out those they think will be popular and for that reason will have some sale value to their trade, is that right?

A. Yes. It is pretty well known by *by* everyone connected with the industry the songs that are desirable. They

come to our place or telephone us; we negotiate as to the right to record it, and the usual procedure and contract.

Q. Under the terms of those contracts, some of which are in evidence here, you as the publisher and owner of the copyright of the musical compositions, vocal and instrumental, are paid a fixed sum per record as manufactured; isn't that the usual plan?

A. It is stipulated.

Q. It is stipulated in the contract, and I presume that you are somewhat familiar with the provisions of the copyright law that was amended not so long ago in that record?

A. I do not—it is hard—

Mr. Frohlich: Of course, this characterization of the contract is subject to proof by the best evidence, and where [fol. 1159] the contract is "records manufactured and sold", that is subject to the terms of the contract. I presume that is understood.

Q. The amount that is important is how much per record or roll.

A. You mean the sales price of the record?

Q. I mean the royalty.

A. The statute, the law, is two cents, and there have been instances where manufacturers of records—I don't think that applies to the roll—sell a very cheap record that is on the market, and the publishers in their endeavor to get revenue in because of this situation I have described earlier in the day, in order to make it possible for them to sell quantities of records if it is possible, they have given them a lower rate.

Q. Lower than two cents?

A. That is right.

Q. The American Society of Composers, Authors and Publishers, of which you are a member, have nothing to do with those royalties that are paid on copyrighted musical compositions in reference to rolls and records; that becomes a matter of arrangement between yourself and the manufacturer of those rolls and records?

[fol. 1160] A. Yes, rolls and records.

Q. Rolls and records, are those part of the other performance rights that you refer to?

Mr. Finkelstein: Objected to as assuming a state of facts not shown on the record.

A. I don't understand the question to begin with.

Q. Do you understand the term that is usually termed "small performance rights"?

A. Yes.

Q. What does that take in?

A. To my understanding it takes in a single song, not dramatic.

Q. Would you say that it did or did not take in the rolls and records?

A. I have never given it any thought.

Q. At any event ASCAP has nothing to do with that?

A. No.

Q. That is something that you have between yourself and the manufacturer, that ASCAP has nothing to do with?

A. No; they don't claim it, either.

Q. As far as your firm is concerned, you are not in the publication of dramatic works, operettas and things of that sort?

A. As I mentioned before, we had two musical comedies [fol. 1161] around 1919; nothing since.

Q. Then I presume that you are typical of a publisher who was largely engaged in the sale and publication of copyrighted vocal and instrumental musical compositions?

A. That is right.

Q. Mr. Von Tilzer, could you tell me the total number of such compositions sold by your firm, let us say, in 1934, 1935, 1936 and 1937, each year? I asked you to get those figures.

A. I have a pretty fair idea. You gave us very little time. When I said it would be O. K. with me I forgot we had a lot to take in. (Paper produced.)

Mr. Finkelstein: The witness has handed you what appears to be a list showing the approximate sale on copies of songs published during the years 1934, 1935, 1936 and 1937 (handing paper to counsel). Do you wish to offer that in evidence?

Mr. Hotz: I see no reason why we should not.

Q. While the counsel are looking over the exhibit preparatory to your answering the last question, I want to ask you, as a comparative matter generally without being too specific, about how extensive a business in the matter of copyrighted vocal and instrumental compositions you do

[fol. 1162] by way of numbers as compared with a concern such as Irving Berlin, Harms, Witmark, for example.

Mr. Finkelstein: I object to that on the ground that no foundation has been laid, incompetent, irrelevant and immaterial; you have not qualified the witness.

A. I should say that we do not compare at this time.

Q. They are much larger than you?

A. At this time.

Q. You would have some knowledge of that volume because of the fact that you are a member of ASCAP board of directors, are you not?

A. Yes.

Q. And through that source there is discussion and some determination as to the amount paid the publisher from ASCAP based upon the size and volume of its sales?

Mr. Finkelstein: I object to the question; it assumes a state of facts not in evidence; trying to put words into the witness's mouth.

Mr. Hotz: This is cross-examination.

A. I would say that such knowledge I would have would been general knowledge, not specific, because it is not the habit of publishers in our business to discuss their intimate arrangements. That is why I say generally that we do [fol. 1163] not compare, frankly. I don't think there is any importance about our size today and the size of these folks you mention.

Q. In getting up this list of approximate sale on copies of songs published during the years 1934, 1935, 1936 and 1937, would that cover all your sheet music or not?

A. No. It covers the bulk of the sheet music. The titles we have on here, and we had no time to compare it, would be titles that we sold two or three copies now and then; the sale was so small on those we had to do some digging.

Q. So that on this list here you have prepared of the songs published in 1934, giving 115,941 copies sold, there would be some in addition to that that are not on here?

A. We have that in the next year. In 1935 there was an additional sale.

Q. In addition to the titles on numbers set forth on this list that I am going to ask you about, would you say there were additional numbers that are not included of sheet music sold?

A. If I may say that they are negligible I would say yes. They are so small they didn't enter in. Can I add that these are numbers of the type that I am speaking about that might sell three or four copies a year.

Mr. Finkelstein: Can you tell us how many of those there [fol. 1164] are?

The Witness: There might be fifty or sixty.

Mr. Hotz: I don't care to press that any further. Mark that first as an exhibit.

Mr. Finkelstein: No objection.

(The paper just offered in evidence was marked Defendants' Exhibit No. 1, of this date.)

Q. This exhibit that has been marked Defendants' Exhibit No. 1, shows for the sales of songs in 1934, 115,941; in 1935, 101,568; in 1936, 36,189, and in 1937, 3,863; is that right?

A. That is right.

Q. Who is your principal jobber?

A. There are several of them. There is no principal one.

Q. Give us the name and address of some of your jobbers?

A. Local or out of town?

Q. Chicago, for example.

A. Lyon & Healey.

Q. Do you have any in Cleveland?

A. No jobbers in Cleveland.

Q. Any in Denver, Colorado?

A. Charles Wills Music Company.

[fol. 1165] Q. Any in Kansas City?

A. J. W. Jenkins Music Company.

Q. Any in St. Louis?

A. St. Louis Music Supply.

Q. Any jobbers in the City of Omaha?

A. No.

Q. Or the State of Nebraska?

A. No.

Q. The music in the State of Nebraska is sold by whom?

A. Hospe in Omaha, Hospe Music Company.

Q. Patten?

A. Yes, Patten, and Muller & Muller. I don't know whether McCrory still handles sheet music. Prentice, they did have a music department. I think Newbetry or McClellan or Kresge, of the five-and-ten, they have music.

Q. Numerous questions have been asked different witnesses from time to time in connection with television. There is no development in connection with television so far that gives you any basis for figuring anything?

Mr. Finkelstein: Objected to; no foundation laid.

Q. So far as income and outlet for sales in your business?

A. I have no knowledge.

[fol. 1166] Q. Are you the member of any of the committees of the American Society of Composers, Authors and Publishers?

A. I am a member of the membership committee.

Q. What are some of the functions of the membership committee?

A. We receive information in connection with an applicant and we decide as a body whether they pass the qualifications for membership.

Q. After they do pass qualifications for membership then you also sit as a member of the committee that classifies them in the group?

A. That is a different group entirely.

Q. That is the classification committee?

A. Yes. That is purely the entrance committee.

Q. As to whether or not they shall get in there?

A. Yes.

Q. What are some of the qualifications for membership?

A. That he is a writer regularly engaged in the business of writing songs, that is his business, and that he writes songs that are of the type that are usable in performance today. If he qualifies on those two points, he is eligible to the Society.

Q. Do you know how many composer and writer members there are in ASCAP?

[fol. 1167] A. Off hand I don't know. I would have to be pretty good to carry all these details.

Q. How many numbers is one of the composers or writers required to have created before you will accept him in membership?

A. I believe it is six published numbers, regularly published numbers.

Q. What do you mean by regularly published?

A. Brought out in regular saleable copies, songs that have been active. Anybody can write a song; it is no trick at all to write a song.

Q. Then you determine whether or not that has any commercial value?

A. Commercial and performance value.

Q. Before a member is elected for membership, or admitted to membership, does it make any difference who publishes his music?

A. I am not sure that I can answer that question. Do you mean whether he is a member of ASCAP?

Q. Publisher member.

A. I am not sure on that point.

Q. Are all of the publishers that deal in copyrighted musical compositions members of this Society?

A. You mean publishers? You mean publishers who publish numbers that have performance value? We have publishers in existence who are publishers of instruction books and piano pieces, that never have any value from the standpoint of performance. I should say there are publishers other than those we have.

Q. When the composer comes in to get his piece of music published, the practice and custom among the publishers you are familiar with through your association with ASCAP is that the copyrights become owned by the publisher, do they not?

A. Yes.

Q. That is your custom in the business?

A. That is right.

Q. And the composer or the author is paid a certain royalty which is based on the percentage of the sales value of his production when it is sold to the trade; that is usually three cents, I think?

A. Not necessarily. It depends on the sales price, in our contracts.

Q. How do you arrive at the percentage of royalty that is paid to the composer or author; by arrangement and discussion with the composer?

A. No, we have one set of royalties in that uniform contract and we proceed accordingly.

[fol. 1169] Q. What are those royalties, as you know them?

A. If you have that specimen contract there, Mr. Frohlich, it is on there.

Q. How high do they run? The highest that you know of?

A. The highest I know of, I should say as high as six cents.

Q. And as low as?

A. As low as three.

Q. They will vary between three and six cents for all practical purposes?

A. That is right.

Q. Which the composer or author gets from the sales price of the copyrighted musical compositions that are handled by your firm?

A. Of the wholesale price.

Q. It is not a percentage, is it; it is not a fixed percentage, is it, this three cents up to six cents?

A. That is right.

Q. In connection with the operation of the American Society of Composers, Authors and Publishers, one-half of the income of that Society, the net income, the distributable income, is divided one-half to the publisher members and the other one-half to the composer and author members, is that right?

A. That is correct.

[fol. 1170] Q. And at the present time your income from the American Society of Composers, Authors and Publishers averages about \$24,000 a year?

A. Approximately; I couldn't give you the exact figure.

Q. What do you do in the case where you have an author or composer who is not a member of the Society and yet you publish, have contracts and publish his music and have taken over the copyright of his productions?

A. It just so happens that the songs I publish, not because of any reason but they happen to be the ones submitted to me, are songs written by members of the Society.

Q. There are instances, I presume, where a party is not a member of the Society for some reason, either not admitted to membership, whose musical compositions you publish, are there not—for example, Mr. Walker; do you know Mr. Walker?

A. Ray Walker?

Q. Yes.

A. You are going back now to the dark days of 1915, 1916, 1917, around that time. It is my impression that Mr. Walker at one time was a member of the Society and allowed himself to drop out of it.

Q. He is no longer a member?

A. I don't believe he is now.

[fol. 1171] Q. Do you know any of the particulars and facts surrounding his non-membership?

A. I don't know, I know the Society took extreme measures at that time to get in touch with members who were delinquent through a number of years; they went through registered letters and through every possible precaution to allow the boys to stay in. Anybody who got out at that time got out because they lost interest themselves.

Q. Do you recollect whether you sold any of Mr. Walker's compositions and paid him royalties after he was a non-member of the Society?

A. I wouldn't be able to tell that offhand; that is quite some time ago.

Q. What part did burlesque play in the popularization of music which you had for sale?

A. At the time that burlesque was very prominent, which was many years ago and in fact before the time that the Society was formed, that was one of the main means. Burlesque has come and gone for all practical purposes; vaudeville has come and gone; radio is supreme.

Q. Burlesque for many, many years was the advertising source through which popular music became known to the public?

A. I wouldn't say that; I would say one of the very active [fol. 1172] ways. One active way was trying out a song and going to affairs and going to dance halls, with megaphones and slides.

Q. Many of those things have gone out?

A. All of them have gone out.

Q. Out of use and desire so far as the public are concerned?

A. Many,—and it is because of radio, simply and solely because of radio.

Q. Burlesque went out before radio.

A. Yes.

Q. There are a number of things that come in the life of a business that affect sales and pass out and then another thing comes along.

Q. Yes, but there is a practical reason behind it. First of all if you get a song and if you don't wish your song to die unknown, if you want to sell it, you must show it to the public. In the song-plugging days and the days of the dance hall—

Q. Let us have the definition of "song plugging."

A. I start out by saying that in order to determine whether you have a song or not you must bring it before

your public. In those days, the days of burlesque, the method used was very satisfactory, because once you made your impression it hung on; and following along that line [fol. 1173] your song had a chance to sell a lot of copies, because they could only hear it by going to Burlesque or going to dance halls where they heard the boys with the megaphone, where the cost of exploitation was very little, and usually by the size and extent of the sales the sales were large, so the publisher could afford to go out and work very hard because when he got through his income was more than ample.

Q. So far as publishing houses, there is competition between them on the sale of their merchandise of musical compositions; they try to sell as many as they can in competition with other publishing houses; they try to make their music as popular as is possible?

A. You mean as far as popularizing our songs, yes; but by any other methods, that wouldn't mean a thing. If you have a song that is popular you sell your song.

Q. The thing is to make it popular?

A. That is what it used to be. Today it doesn't make any difference, because no matter how good your song is your sale is limited and your cost of production is so great that it seems impossible.

Q. In connection with the public performance rights of copyrighted vocal and instrumental musical compositions, in that regard the entire authority and right to fix the fees and licenses paid by users within the State of Nebraska [fol. 1174] and elsewhere is vested in ASCAP?

Mr. Finkelstein: I object to the question; the contract speaks for itself.

A. I should say that is right.

Q. And the distribution of the proceeds is in the hands of ASCAP, that is, the distributable proceeds that they collect?

A. They are a collection agency.

Q. They fix and determine, that is, that organization fix and determine the rate of distribution to the respective members?

A. Yes, I guess you could say that.

Q. For the respective members. Certainly they don't distribute it to anybody that is not a member?

A. That is right.

Q. Do you continue to pay Mr. Walker any rights on his music?

A. We would if his songs were selling. But it happens that his songs were novelty songs.

Q. Did you pay him anything after he ceased to be a member of the Society?

A. I can't recall that, but I have a vague recollection and feeling that because of the short life of the songs of his type the songs have ceased to sell.

[fol. 1175] Q. Do you know as a member of the committee on membership whether or not Walker has made application, more than one application, for reinstatement in the Society?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. His application has been in. Whether he did it more than once I can't say.

Q. But it has not been accepted?

Mr. Finkelstein: Same objection.

A. We have not passed on it.

Q. Why not?

Mr. Finkelstein: Same objection.

A. His songs today are not active. The songs that he published, that he wrote and were published in those days are not active today.

Q. Have you entered into contracts recently with Mr. Walker for the renewal of any of his copyrights that are about to expire, have you done that?

Mr. Finkelstein: Same objection.

A. Yes.

Q. Do you recall which ones?

A. Not off hand. One song that I recall is "Poor Pauline."

Q. Weren't some of his songs for which you had the copyright and the publisher's right, "The Girls Are Wearing [fol. 1176] Cotton Now"?

A. Yes, that is one of the songs; I remember that; nothing ever happened with that song.

Q. "I Can't Give Her Up"?

A. That is another.

Q. "The Girl I've Got Has Got It On Them All"?

A. I think so.

Q. "Southern Hospitality"?

A. Yes.

Q. "Your Mother Has Gone Away To Join The Army"?

A. Yes.

Q. "She Used To Be The Slowest Girl In Town"?

A. Yes, that is the only song that did mean anything from the day it was published.

Q. "Poor Pauline"?

A. That was another one.

Q. "The Price I Paid For You"?

A. Yes.

Q. "Knit, Knit, Sister Sue"?

A. Yes.

Q. Just what is the form of getting renewals, just how do you go about getting them, copyright renewals; must you do that by agreement with the composer?

Mr. Finkelstein: I object to the question; no foundation laid. Why don't you specify what type of instance you have in mind?

Mr. Hotz: The witness knows his own business.

Mr. Finkelstein: We have been dealing with cases where there are contracts. If there are contracts the contracts speak for themselves.

Mr. Hotz: The goes without saying.

A. I would rather not discuss that question, because there seems to be a great difference of opinion. I would rather not go into that. Our catalogue is valuable.

Q. Including Ray Walker's compositions?

A. I like Ray Walker very much; I wouldn't say anything disparaging about him. His are not the only songs we publish. Albert Von Tilzer and others make up a great part of our catalogue. I rather regret that we happen to be leaning on that one question,—because we have others.

Q. You have others that come into the same status that he has, that are not members of the Society and have copyrighted musical compositions that you publish?

A. Not at all.

Q. Would you say in your knowledge of the members of the American Society of Composers, Authors and Publishers that there are members of the Society that are there and pay their dues, that have standing so far as their musical

[fol. 1178] compositions are concerned, that were comparable with Mr. Walker?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I might say this: You are talking to a publisher, not a writer. A writer would know more than I would; a writer has to do with writers, whereas a publisher does not—I may use the word—mingle with the writer's business.

Q. Wouldn't you say that Mr. Walker's works were more valuable than many of the writers that are in the eighty-dollar class with the American Society of Composers, Authors and Publishers?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I don't know who the writers are in the eighty-dollar class, or I might be able to answer your question more intelligently. I don't have occasion to come in contact with the machinery that classifies the writers.

Q. When you stated in response to the questions that were put to you by Mr. Frolich about the expenses that you would be put to in the State of Nebraska in reference to copyrighted vocal and instrumental musical compositions that were in use in that State, you no doubt had in mind that you would have to maintain an organization for protection against infringement of the musical compositions that you own and control through copyright, in that State; isn't that right?

A. I had in mind?

Q. Yes.

A. I don't mean it in that way, frankly, because I also stated, if you remember, that if I were put to that need I would probably be out of business because I couldn't afford to do it.

Q. You have never studied the Nebraska act, or perhaps never even read it over?

A. I am not familiar with it.

Q. What would you say as a publisher, about the comparative merits, so far as the public are concerned, of the style and type of popular music that is now presented for publication throughout the United States, for instance during the past five or six years, and that which it was previously,—how does it compare in value?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial; not within the issues; hypothetical and assuming a state of facts not in the record; entirely speculative; not shown to be within the knowledge of the witness.

A. I should say that it would be very hard to make comparison [fol. 1180] parisons. However, in my estimation, the music we have is just as valuable for its period as the music was at that period that you spoke of.

Q. That would be your conclusion?

A. Yes.

Q. We had a witness here on the stand this morning that gives information to show that Victor Herbert's music, for example, so far as numbers of copies were concerned, was keeping up quite well. That is, in 1935, 1936 and 1937, in fact in 1937 it showed some increase. That would indicate, would it not, that that music,—while standard, I realize,—has become standard,—has commercial sales value that is quite constant.

Mr. Finkelstein: What is the question?

A. I should say that when you compare the sales of Victor Herbert numbers and you are referring to their original sales, you will find that they are quite small in comparison. I don't know what you are trying to arrive at.

Q. Was Victor Herbert's music considered popular music the first time when it first came out?

A. Popular from the standpoint of usage.

Q. It became standard then because the public adopted it and accepted it?

A. That is not true.

[fol. 1181] Q. That is not more true of Victor Herbert than of any other composer?

A. Only that it happened that he was one man who wrote more of that type of numbers. You might make the same comparison between Abraham Lincoln and some other President who was a capable man but not so great a man as Abraham Lincoln.

Q. I am going to take from the list of the present composers and authors, members of the Society, one Monty Siegel. Do you know Monty Siegel?

A. I am not familiar with his work.

Q. Do you know him at all?

A. I know him; I have met him; I have seen him around.

Q. Do you know him as well as you know Ray Walker?

A. No.

Q. Would you say that Mr. Siegel's ability as a song writer and producer of musical compositions was equal to Mr. Walker's?

Mr. Finkelstein: I object to the question on the ground that no foundation has been laid. The witness testified already that he has no basis on which to determine the respective merits and qualifications of the writers.

Mr. Hotz: The witness is on the membership committee [fol. 1182] of the American Society of Composers, Authors and Publishers.

A. I don't see how that has any bearing on the case.

Mr. Hotz: I move to strike out the answer; strike out the argument of counsel, too. Read the question.

Q. (The preceding question was read by the stenographer.)

Mr. Finkelstein: I renew my objection.

A. I don't think I am capable of answering that question.

Q. You are a member of the board of directors of the American Society of Composers, Authors and Publishers and you are on the membership committee, are you not?

A. If my recollection serves me right, Mr. Siegel was admitted before I became a member of that membership committee. I am quite sure of that.

Q. That was true of Mr. Walker, wasn't it?

A. That was true of Mr. Walker, but as it happens I have never published any of Mr. Siegel's works, have I?

Q. No. I think you said Mr. Walker had an application for reinstatement in the Society pending?

A. That is right.

Mr. Hotz: That is all.

[fol. 1183] Re-direct examination.

By Mr. Frohlich:

Q. Mr. Von Tilzer, what about the average price at which you sell wholesale your copies of sheet music?

A. That would have been easy to answer two years ago when we were active on popular tunes more than we are

now. I should say about 20 22, average between 20 and 22.

Q. Average wholesale?

A. Yes. Those are standard numbers.

Q. Taking your whole catalogue by and large, taking all your numbers, I want you to give me an average price at which you sell them to large wholesalers?

A. I would say 22.

Q. If you add to that 22 cents per copy for each of your compositions that you sold in the State of Nebraska a price or addition to that for each and every use that may be made of that composition, including television and including public performance for profit, could you as a practical business matter sell any of your compositions and songs to any jobber or dealer in or for the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion, no foundation, assuming facts not warranted by the record.

[fol. 1184] A. It would be utterly impossible to interest a merchant if we were to add on these additional amounts you mention.

Q. Would you have any market in the State of Nebraska for your productions under the conditions I have outlined?

Mr. Nye: Same objection.

A. Absolutely not.

Q. As a matter of fact, isn't a good deal of your music purchased by young people who take it home to play on the piano?

A. Mostly.

Q. Most of the sheet music is purchased for the home?

A. Yes, that is right.

Q. You were asked something by Mr. Hotz on whether or not there was competition in obtaining publicity or plugging for popularity for your musical compositions. As a matter of fact, to your own knowledge and your experience and background, is there any such thing as competition between any two songs in the country?

Mr. Nye: Objected to as improper re-direct examination; immaterial.

A. I thought I did answer that when I said there is no competition between songs, because the publisher owns his own songs.

Q. If a user wants to play "Yes, We Have No Bananas," [fol. 1185] is he going to buy any other composition in place of that if he can get "Yes, We Have No Bananas"?

Mr. Nye: Objected to as speculative.

A. I don't believe so.

Mr. Frohlich: That is all.

Recross-examination.

By Mr. Hotz:

Q. You have a sales manager, haven't you?

A. Sales manager?

Q. Yes, for your music?

A. If we were doing any business that called for it. Mr. Lang is the nearest we have and he is a very good one, too, but we haven't any business.

By Mr. Nye:

Q. Mr. Von Tilzer, when you have a song on which you are pushing the sale, you try to sell it to various users, do you not, in preference to someone else's song?

A. We submit our songs—when you say "user" I want to be sure I understand you rightly. Are you referring to artists who sing in various places of amusement?

Q. Artists, radio studios, orchestras.

A. We submit our material as any other salesmen do in any other line.

Q. Submit it in competition with other popular songs [fol. 1186] of that day?

A. You might call it that.

Q. I didn't mean that you knocked other music, but you try to convince persons that your song has more merit than some other song or all other songs generally?

A. I wouldn't put it that way. We have a song which we know lots of people should use; we know that. We present the song. They either take it and accept it, or reject it. People have different ways of showing that. You have your Park Avenue method and you have your Baxter Street method where they try to force things on you. It happens we like to submit things.

Q. One of the best arguments you can make for your song is that there is a plugging campaign to create a demand for the song?

A. No; the best argument is that they like the song; we don't force it on them, because you lose out in the end.

Mr. Nye: That is all.

[fol. 1187] DEPOSITION OF EDGAR LESLIE

[fol. 1188] EDGAR LESLIE, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Edgar Leslie, 59 West 46th Street, New York City.

Q. What is your occupation, Mr. Leslie?

A. Song writer.

Q. You write the words, lyrics, or the music?

A. Generally I write the words.

Q. Have you occasionally written any music?

A. On very few occasions.

Q. How many years have you been engaged in that profession?

A. Thirty.

Q. In those thirty years have you written and had published many compositions?

A. I should say so.

Q. You usually write your composition in collaboration with a composer who composes music to your lyrics, is that right?

A. Yes.

Q. If you have a lead sheet of the manuscript of your [fol. 1189] composition, you take it to a publisher and arrange with him for publication?

A. Yes.

Q. Have you dealt with many publishers through these years?

A. A number of them.

Q. Give us the names of publishers who have published some of your compositions?

A. Watterson, Berlin & Snyder, Leo Feist, Jerome H. Remick, Witmark & Sons, Harms, Inc., J. Morris Music

Company, Donaldson, Douglas & Gumble, Crawford Music Company, Silver, Brown & Henderson, Harry Von Tilzer; that is some of them; there are others.

Q. You are a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. When did you first join that Society?

A. At its inception, 1914.

Q. Have you been a member continuously since that time?

A. I have.

Q. Have you a contract made in 1935 between yourself and the Society?

A. I have.

[fol. 1190] Mr. Frohlich: I assume it is stipulated that that contract is identical with the contracts in evidence with the other members?

Mr. Nye: Yes.

Q. Now, Mr. Leslie, did you write songs occasionally that became known as hit numbers?

A. I should say so.

Q. How would you define, in your own language, a hit number?

A. Well, a song that is generally played and sung and included on most programs throughout the country, songs that reach a pinnacle point in the matter of sales through the medium of sheet music jobbers.

Q. Will you give us the names of numbers, compositions that were hit numbers prior to 1922?

A. Yes.

Q. Can you give us the names of some of those numbers?

A. The first one was "Yiddisha Cowboy," "Lonesome," "Good Luck, Mary," "You Have To Get Out And Under His Automobile," "Sometimes I Love You," "When Grown-Up Ladies Act Like Babies," "For Me And My Gal," "Oh, What A Pal Was Mary." There are others I just can't call to mind.

Q. Did any of those numbers whose names you have just given—

[fol. 1191] A. Pardon me. "California And You," you can include that in that list.

Q. These are hit numbers prior to 1922, is that right?

A. Yes.

Q. Did any of those numbers sell more than a million copies?

A. Many of them.

Q. Let us be specific.

A. "Get Out And Get Under His Automobile."

Q. How many copies did that sell?

A. Over a million copies.

Q. What others?

A. "California And You" sold over a million; "Lonesome" sold over a million; "For Me And My Gal" sold over a million and a half copies; "Oh, What A Pal Was Mary" sold over a million and a half copies; "Sometimes I Love You" sold over a million copies; and maybe one or two others that I can't recall to mind.

Q. Can you give us the names of some of your hit songs within the last ten years?

A. Yes, since 1927 or 1928?

Q. Yes.

A. "Among My Souvenirs," "Romance," "Me And The Man In The Moon," "In A Little Japanese Tea Room," [fol. 1192] "On Treasure Island," "A Little Bit Independent," "Moon Over Miami," "It Looks Like Rain In Cherry Blossom Lane," "Robins And Roses," and a current song called "At A Perfume Counter On The Rue de la Paix."

Q. For all these songs you have just mentioned you wrote the lyrics, didn't you?

A. I did.

Q. Of any of the compositions that you have mentioned which were published and became hits within the last ten years, did any of them sell as high as one million copies?

A. One song sold about a million and a half copies, about ten years ago.

Q. Among these other songs did any song attain that sale?

A. No.

Q. Was "In A Little Japanese Tea Room" one of your songs?

A. It was.

Q. Do you know when that was published?

A. Either 1935, I think, or 1936.

Q. Can you refresh your recollection from this slip of paper as to these songs and the copies that were sold (handing paper to the witness)?

A. They are approximately the amounts that were given [fol. 1193] me on my royalty statements.

Q. Will you please read off the figures for those six or seven songs?

A. In 1935 "Little Japanese" sold 315,000; "Treasure Island," 1935, sold 350,000; "Little Bit Independent," 1935, sold 220,000; "Moon Over Miami," 1936, sold 190,000; "It Looks Like Rain In Cherry Blossom Lane," last year, 245,000 copies.

Q. Let us go back. Were these songs you have just mentioned successful popular songs?

A. Each of the five songs I have just mentioned attained the No. 1 position on the Lucky Strike Hit Parade, and they also attained, from the information I have received from jobbers, the No. 1 spot in the matter of sales during their life.

Q. Will you please explain what this Lucky Strike Hit Parade is?

A. It is a weekly resume of the ten most popular songs in the market in the country, based on calculations they make on investigations they make themselves.

Q. Going back to songs other than these five, but which were published since 1928, did any of those songs, aside from "Among My Souvenirs," reach a million copies in sales?

[fol. 1194] A. No, sir.

Q. What was the highest reached by any of them?

A. I think a song called "Me And The Man In The Moon" sold about 375, or 400,000 copies.

Q. Do you recall any songs other than these five songs read from this list, since 1935 that sold any greater number of copies?

A. Greater amount?

Q. Yes.

A. No, those were the five major songs.

Q. Going back to the period prior to 1922 and particularly to the songs that you mentioned as outstanding hits that sold more than a million copies, you had on those songs contractual arrangements with your publishers with regard to mechanical reproduction rights on those songs?

A. Yes, I did.

Q. In every contract you make with a publisher there is a provision for the payment to you of a percentage of moneys that come in from mechanical reproductions?

A. Yes.

Q. That is a general provision in all such contracts?

A. Yes.

Q. You know that from your general experience as a song writer?

[fol. 1195] A. Yes.

Q. What mechanical royalties did you receive on those songs that you mentioned, prior to 1922; give us an approximate figure of what you received quarterly or annually on those compositions.

A. I have had songs that sold in excess of one million and I received a proportionate amount.

Q. Did any of those you mentioned sell in excess of one million records?

A. Yes, practically all; some in excess of two million records. I can average all those songs as having sold at least one million records.

Q. Let us take the period subsequent to 1922 and let us take the songs you mentioned as your outstanding hits. How many records were manufactured and sold out of those compositions?

A. That is what I am talking about.

Q. That was prior to 1922.

A. Oh, yes. There was a general decline over the years, a gradual decline in sales.

Q. Is that a general decline?

A. Yes; almost nothing at present.

Q. What revenue did you receive in 1937 from that source, mechanical reproduction, piano rolls and records on all [fol. 1196] of your compositions?

A. A negligible amount. I can get you a statement.

Q. Can you give us an approximate figure?

A. It didn't amount to anything; it was a two or three or \$400 item.

Q. Have any of the compositions published by you been renewed, has the original copyright period expired on them, the twenty-eight-year period?

A. I have recaptured all those songs myself. I have re-copyrighted them in my own name.

Q. Is it a fact that the renewal rights have accrued on some of your compositions?

A. Yes.

Q. About how many compositions did you compose, would you say, in the last thirty years, roughly?

A. Between five hundred and a thousand, I would say.

Q. I show you a list of compositions, called "List of compositions by Edgar Leslie," and ask you whether that is a complete list of your compositions?

A. I wouldn't say it was a complete list of all the compositions or songs I have written.

Q. Is it a partial list?

A. It is a partial list.

Q. Is each and every song mentioned in that list one of [fol. 1197] your songs?

A. So far as I can recollect I would say yes.

Mr. Frolich: I offer it in evidence.

(The paper just offered in evidence was marked plaintiffs' Exhibit No. 29, of this date.)

Mr. Nye: Do you mind if I ask him one question?

Mr. Frolich: Go ahead.

Mr. Nye: These figures opposite each name of the song represents the year in which it was written?

The Witness: The year in which it was copyrighted.

Mr. Nye: That is all. No objection.

Mr. Frolich: I don't want to leave the impression that I just gave you a partial list of the songs of the witness. If counsel desire I can obtain a complete list of Mr. Leslie's works.

Mr. Nye: We don't care for that. May I ask counsel where that list would be obtained?

Mr. Frolich: We would have to have it obtained.

[fol. 1198] Mr. Nye: From where? From the Copyright Office in Washington?

Mr. Frolich: From the Copyright Office in Washington.

Mr. Nye: Was this particular list prepared by the Copyright Office?

Mr. Frolich: From records in the Copyright Office.

Mr. Nye: You do have records of all the music that you ever copyrighted, don't you?

The Witness: I don't think I have. I haven't any copies of my songs.

Mr. Bennett: But you have contracts with publishers, have you not?

The Witness: Some of them.

Q. Now, Mr. Leslie, did I understand you to testify that some of these compositions composed by you came up for renewal from time to time in the past few years?

A. Yes.

Q. In each and every instance when the original copyright period expired did you apply for renewal on that particular composition?

A. I did.

Q. And then after you obtained the renewal of the com-[fol. 1199] position did you make some arrangement or agreement with a publisher for the continued publication of the composition for the balance of the 28 years of the renewal?

A. I have retained those for myself.

Q. You have retained the copyright yourself?

A. Yes.

Q. Are you publishing these renewals in your own name?

A. None of them has been good enough to publish as yet, none of my songs.

Q. When your hit songs come up for renewal do you propose to renew them?

A. In conjunction with the composer, yes.

Q. Will you try to exploit the publication of the hit songs for the period of the renewal?

Mr. Nye: Objected to as calling for speculation.

A. Yes.

Q. Are the renewal rights in your numbers, particularly your popular hit numbers, of any value to you; have they a financial value?

Mr. Nye: Objected to as calling for speculation.

A. They may have.

Q. Let us take one of your outstanding numbers, "Among [fol. 1200] My Souvenirs".

A. That should have plenty of value.

Q. Has that more or less a perennial value?

A. Yes, it is more or less enduring.

Q. What would you expect to demand in the way of advance royalties for the renewal period of that copyright?

Mr. Nye: Objected to; no foundation for knowledge; referring to a state of facts not warranted by the evidence; it is speculative.

A. I would ask a substantial sum, \$1,000 or \$1,500.

Q. Advance royalties, with an understanding that you obtain royalties as the song continued to be published?

A. Yes.

Q. When these songs were taken by manufacturers of rolls and records, they were so taken under some contractual relation with the publisher of each of these publications, weren't they? You had no say in the matter, did you?

A. In the matter of what?

Q. Of giving to any particular manufacturer the making of the rolls and records?

A. I gave that to the publishers.

Q. And your publisher made that contract with the manufacturer?

A. Yes.

[fol. 1201] Q. And whatever money he received he split with you?

A. Yes.

Q. On some sort of basis?

A. Yes.

Q. Did your publisher give to any manufacturer of any of your compositions in the form of rolls or records the right at any time to determine and fix the price to be charged for public performance for profit of the particular song and affix that price on the record or roll?

Mr. Nye: Objected to; no foundation for knowledge; calling for a conclusion.

A. No.

Q. Would you in the future be willing to grant to any manufacturer of piano rolls or records the right to fix the price for the public performance for profit of that particular record?

Mr. Nye: Objected to as calling for speculation.

A. No.

Q. So far as you are concerned, do you want to give that right to anybody at all?

Mr. Nye: Same objection.

A. No.

Q. Would you give the right to your publisher?

[fol. 1202] Mr. Nye: Same objection.

A. No.

Q. Do you wish to retain for yourself the right to determine and fix the price to be charged for the public performance for profit of your compositions?

Mr. Nye: Same objection.

A. Yes.

Q. Let me read to you a paragraph of the Nebraska statute that is in controversy here (reading Section 2, subparagraph "(A)" of Legislative Bill No. 478). Now, Mr. Leslie, could you, if you were not a member of any combination and if you were acting independently, and assuming that there are upwards of 367 establishments or places of entertainment in the State of Nebraska that use music, could you determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska for all uses and purposes including public performance for profit?

Mr. Nye: Objected to as assuming facts not warranted by the record; calling for speculation.

A. I could not do that.

Q. Have you at the present time any representative or agent or employee in the State of Nebraska?

[fol. 1203] A. No.

Q. If you were to try to determine and fix the price to be charged for the public performance for profit of each of your compositions within that State, how would you go about it?

Mr. Nye: Objected to as calling for speculation; no foundation as to knowledge.

A. I would canvass the State and the use they make of music and the importance it has to their operation.

Q. Would you have to take notice of the size of the establishment, the audience reached—

Mr. Nye: I object to the line of questioning as extremely leading and also calling for speculation.

A. Yes.

Q. Would you have to take into consideration the nature of the particular establishment at which the music is being used?

Mr. Nye: Same objection.

A. It is too many for me to be bothered.

Q. Assuming that you would be able to obtain the information with respect to each of the various establishments in the State of Nebraska, would you say that the data so obtained would be constant, or would it fluctuate from [fol. 1204] week to week?

Mr. Nye: Objected to as speculative.

A. It would fluctuate from day to day.

Q. In other words, the hotel may play a composition one night with a ten-piece orchestra and the next night with a piano?

Mr. Nye: Objected to as leading and calling for speculation.

A. That is right.

Q. And the prices that you fix for that use would have to be determined upon those elements?

A. It involves too many details for me to bother with.

Q. Are you financially able to retain and employ some representative in the State of Nebraska to obtain that information for you?

Mr. Nye: I object to the question; no reasonable foundation for the witness's knowledge; calling for speculation.

A. No.

Q. Would you be required to retain some representative in the State of Nebraska to detect infringements?

Mr. Nye: Same objection.

A. I would.

Q. Would that require you to incur the payment of travel [fol. 1205] ing expenses and hotel bills?

Mr. Nye: Same objection.

A. Yes.

Q. Would it involve the payment of salaries?

Mr. Nye: Same objection; leading.

A. Yes.

Q. Would the representative so employed have to be a man skilled in music?

Mr. Nye: Same objection.

A. I should say so; I would want such a man.

Q. Would you have to employ a lawyer to prosecute infringement suits in that State?

Mr. Nye: Objected to as leading; also calling for speculation.

A. Yes.

Q. Suppose you tell us in your own words how you would go about determining and fixing the price to be charged for the public performance for profit, for example, on each of your compositions, in the State of Nebraska.

Mr. Nye: Objected to as calling for speculation.

Q. What would be the proper thing for you to do?

Mr. Nye: Objected to; no foundation for the knowledge of the witness.

[fol. 1206] A. I would have to ascertain what sort of use he was going to make of my work, and determine or try to determine how valuable my contribution to his program would be, what it was earning for him; I would charge relatively.

Q. Would it be possible for you to fix a price to be printed on the sheet of music for all of the use that can be made of that composition in the State of Nebraska?

Mr. Nye: Objected to as calling for speculation.

A. I don't see how I could do that; I don't think it would be practical.

Q. Have you any information in your possession today with respect to television?

A. I believe that there is a possibility in the near future.

Mr. Nye: I move to strike out the answer as not responsive.

Q. Could you determine and fix the price on your compositions with respect to the television use in the State of Nebraska?

Mr. Nye: Objected to as speculative.

A. I could not.

Q. Have you any information or data that would help you to determine and fix such a price?

A. None.

[fol. 1207] Q. Are you in a position to know today what the value of the use of television will be ten years hence?

Mr. Nye: Same objection.

A. No.

Q. If you were acting alone and independently of any group or association similar to ASCAP, would you be willing to determine upon the publication of your compositions, once and for all, the prices for all forms of use for the balance of the copyright period in the State of Nebraska?

Mr. Nye: Objected to as calling for conclusion, speculation; and for the further reason that it assumes facts not warranted by the record.

A. No.

Q. Do you desire to retain for yourself, if you are alone and not acting in conjunction with any combination, would you desire to retain for yourself the right to fix the time when you begin to exercise the right of public performance for profit?

Mr. Nye: Objected to; assumes facts not warranted by the record.

A. Will you repeat that, please? (The pending question was read by the stenographer.) Yes, I would.

[fol. 1208] Q. Do you desire to retain for yourself the right to determine when your right to public performance for profit is to be deemed commercially valuable to you?

Mr. Nye: Same objection.

A. Yes.

Q. Have any of your compositions been performed over the radio?

A. Yes.

Q. Have you heard them so performed?

A. Yes.

Q. Have you heard your compositions so performed over the National hook-ups of the National Broadcasting Company and the Columbia Broadcasting System?

A. Yes, I have.

Q. Are your compositions being performed presently in the State of Nebraska?

A. I don't know.

Q. Have you been in that State?

A. I have not.

Q. Prior to 1914 did you ever obtain any compensation from any source whatever for the public performance for profit of any of your copyrighted musical compositions?

A. No, sir.

Q. When for the first time did you obtain any such compensation, and from whom?

A. The American Society, in 1921.

Q. What compensation did you receive from the American Society in 1935?

A. I received a quarterly dividend check covering my proportion of the revenue.

Q. What did that amount to in dollars and cents?

A. I think a hundred and some odd dollars; I am not certain.

Q. What was the total income you received from the Society for the year 1935?

A. I thought you said 1921; if you did it is a mistake. For 1935, I don't know, around \$14,000, I guess.

Q. What did you receive from the Society in 1936?

A. An increase of perhaps a thousand dollars; and last year \$17,000.

Q. Is that your main source of income today, from your compositions?

A. It is.

Q. And without that source of income could you live and exist on the moneys that you receive from the sale of sheet music and mechanicals of your compositions?

A. Not as well as I have been accustomed to live.

Q. Could you pursue your occupation as a song writer [fol. 1210] if you did not receive the money from the American Society?

A. I would have to pursue it, I guess, because I can't do anything else, but it wouldn't be very lucrative.

Q. Have you ever brought suits yourself for infringement of your musical works?

A. No.

Q. Have you experience in bringing suits for infringement; have you any experience along that line?

A. No.

Q. Would you know how to go about it?

A. I imagine I would have to hire a lawyer to prosecute the infringement for me.

Mr. Nye: I move to strike out the answer as not responsive; merely the conclusion of the witness.

Q. Would you know how to protect your rights if it were not for the American Society?

Mr. Nye: Objected to as calling for a conclusion, the witness having already answered the question.

A. No, I couldn't very well intelligently do it.

Q. Have you got the financial means to do it?

Mr. Nye: Objected to; calls for a conclusion and assumes facts not within the knowledge of the witness.

[fol. 1211] A. It would be too discouraging a proposition for me to enter into.

Mr. Nye: I move to strike out the answer as not responsive.

Q. What did you receive from the sale of sheet music and the manufacture and sale of rolls and records of your compositions in the year 1937?

A. Perhaps in excess of \$500 and less than a thousand.

Q. What did you receive in 1936?

A. I sold more songs in that year; perhaps I received a little bit more money, but the average per song was about the same.

Q. Did you receive over a thousand dollars from that source?

A. I should say so. It is difficult to recall to memory those figures.

Q. What did you receive from the sale of sheet music and mechanicals from all sources on the average each year prior to 1922?

A. I received as high as \$35,000 a year. I recall some half year periods when I received 18 or 20 or \$21,000.

Q. Is that diminution in the receipts from the sale of sheet music and mechanical royalties today general throughout the business, if you know?

[fol. 1212] A. I should think so; I know nothing to the contrary.

Q. You get around pretty much among the members of your profession?

A. Very, very much.

Q. You know a great many of them personally?

A. I do.

Q. You know a great many of the publishers personally?

A. Very well.

Q. Would you say from your experience and your background that this diminution from the receipts from sheet music and mechanicals is true with respect to other writers and publishers?

Mr. Nye: Objected to; no proper foundation; not the best evidence.

A. I would say yes, for this reason, that these writers often times compare statements, we talk shop, we look at one another's statements from publishers. A gradual decline has manifested itself in all statements during that period.

Q. You have testified that you have written five hit numbers since 1935?

A. I think that is incontestably true.

Q. How long a period were these respective compositions popular?

[fol. 1213] A. I should say from the time of publication.

Q. From the time of publication until such time as their popularity ceased; that was how long?

A. Four or five months, four months.

Q. Four months; five months at the outside?

A. Yes.

Q. Let us take "In A Little Japanese Tea Room".

A. Yes, it is as dead as Caesar.

Q. How long did it flourish?

A. I should say about four months.

Q. Was it played extensively over the radio?

A. Yes.

Q. Is that same true with respect to "On Treasure Island"?

A. It is true of each of those five songs I have mentioned.

Q. Going back to the period prior to 1922 and taking the songs that you mentioned earlier as being your outstanding hit songs, how long were those songs popular?

A. Well, they had a record sale of sheet music which extended over, I should say, eighteen months.

Q. Is that an average period for a hit song?

A. Yes; sometimes two years.

Q. Do you know of any song, of your own or anybody else's, in the last ten years that has been popular for a

[fol. 1214] period of eighteen months? Would you be in a position to know?

A. I don't know of any. I think I would receive information about it.

Q. Are you familiar with the current popular tunes?

A. I am.

Q. You keep pretty close watch on all these songs, don't you; it is part of your business?

A. Yes, I do.

Q. If there is a song popular as long as a year and a half, you would be likely to know about it?

A. Very much so.

Q. You know of no such song today?

A. No.

Q. And that has been true, has it, for the past ten years?

A. Yes.

Q. What in your opinion is the condition due to?

Mr. Nye: Objected to as calling for a conclusion.

A. Constant use by radio, keeping people away from pianos, discouraging the purchase of piano rolls and records.

Mr. Frohlich: You may examine.

[fol. 1215] Cross-examination.

By Mr. Nye:

Q. Mr. Leslie, you stated that during the last ten years there was no musical composition that you knew of that lasted a year or eighteen months as a popular number?

A. Not songs that we accept as popular.

Q. Yes. As matter of fact your song "Among My Souvenirs" was brought out about ten years ago?

A. That is right.

Q. Or probably eight or nine years ago; which was it?

A. I think it was in 1927. I thought it was 1928, but they told me 1927.

Q. That was popular and that song lasted for considerably more than a year?

A. It is occasionally used, but not in a sense that we accept popularity, that everybody sings a song.

Q. That song is fast becoming what we call a standard number?

A. It has to that extent but not from a revenue standpoint in the form of music sales, sheet music sales or record sales.

Q. This song of yours, "Moon Over Miami," was another outstanding hit, wasn't it?

A. Yes.

[fol. 1216] Q. How long was that popular?

A. It was accepted as popular.

Q. How long ago did that come out?

A. Around Christmas time about 1935 or the early part of 1936.

Q. That song remained popular longer than four months?

A. Well, they used it as an emblem of identity of folks coming out of Miami.

Q. It remained a popular number as you define it far longer than most?

A. No, I shouldn't say so; it didn't sell.

Q. How many copies were sold?

A. Less than 200,000; the least of all those songs.

Q. You sold "It Looks Like Rain In Cherry Blossom Lane", 245,000 copies?

A. Yes.

Q. That was in 1937?

A. Yes.

Q. How much did you get a copy on that?

A. A cent and a half.

Q. And yet you say that during 1937 you received only \$500 to \$1,000 from the sale of music?

A. No, from mechanical royalties, records and piano rolls.

Q. Then your answer to Mr. Frohlich's question should [fol. 1217] be limited to mechanicals only?

A. If you will repeat the question I think you will find that he asked me that.

Q. Now, then, what was your income from sheet music during 1937?

A. I can't tell you that.

Q. You have a pretty fair idea, haven't you?

A. Let me see; seven or \$8,000. I could get those statements and give you the exact figures.

Q. We don't care for the exact amount. That was based on a cent and a half per copy?

A. That is right.

Q. In 1936 you said you had more than you did in 1937. How much did you receive in 1936 for sheet music?

A. I can approximate that if I can look at the list of songs. (Paper handed to the witness.) I would say about \$10,000; I think that covers it.

Q. That was at a cent and a half a copy also?

A. Yes; half of three cents, and the mechanical revenue was based on fifty per cent.

Q. In 1935 how much did you receive from sheet music?

A. About seven or \$8,000. Oh, no, more than that; about \$10,000.

Q. Now, you had more hits in 1935, which caused that [fol. 1218] increase over 1937?

A. In 1935? Yes. I think I started on a cycle of better songs then.

Q. As a matter of fact, the song "Among My Souvenirs" was the most outstanding thing you have done in the last ten years, isn't it?

A. I consider it so, that and the song called "Romance" which has practically taken the same sort of position as "Among My Souvenirs".

Q. And "Romance" sold upwards of a million copies?

A. No, only a couple of hundred thousand copies.

Q. When was that written?

A. 1929-1930.

Q. That was written about the same time as "Among My Souvenirs"?

A. About two years later.

Q. And the fact that "Among My Souvenirs" is such an outstanding piece of music artistically had a great deal to do with the number of copies of the song that were sold at the time it came out, didn't it?

A. No, it was just a song. There seemed to be a purchasing power at that time that does not exist today. It didn't sell any more than other popular songs during that period.

[fol. 1219] Q. You don't think that the artistic value of the song, aside from its value as a popular piece of music, had anything to do with the sale of the copies?

A. That is speculation. There may be an intangible something that cannot be placed in words.

Q. There is an intangible something about every song that is written?

A. Yes.

Q. And that intangible something, is something that reaches into the mind and soul of the public and creates a desire for it?

A. There are no ways of determining it.

Q. You are a member of the board of directors of the ASCAP association?

A. I am.

Q. What committees are you on with that association?

A. I don't know if I am on any committee. My health has not been so good during the past six or seven years as to permit me to give personal services.

Q. You are acquainted with the methods used by ASCAP in determining the license fees that shall be charged to users?

A. Yes, I am acquainted with them.

Q. Those are determined by the board of directors and/or [fol. 1220] some committee appointed by the board of directors?

A. A committee appointed; they make recommendations and they are discussed pro and con in the board room, and sent back for further action.

Q. Has any individual member of the Society, aside from the board of directors, anything whatever to do with fixing these license fees that are charged to the user?

A. No; the power is vested in the directorate.

Q. The individual publisher or song writer has nothing to do with that when he enters into his contracts?

A. No.

Q. Not afterwards?

A. No.

Q. The board of directors through its membership committee also pass upon all applications for membership to the association?

A. Recommendations are made for the board to ratify.

Q. And the board either ratifies or declines to ratify?

A. Yes.

Q. Those questions are not submitted to the membership of the Association at any of its meetings, are they?

A. To pass upon the qualifications?

Q. No.

A. No; that information is determined by the membership committee, as I understand it.

[fol. 1221] Q. And the general membership of the Society at their general meetings have nothing whatever to do with that?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. Never.

Q. And the general membership of the Society at the general or regular meetings of the Society have nothing whatever to do with the election of the board of directors, do they?

Mr. Finkelstein: Same objection.

A. No.

Q. As a matter of fact, all of the business of the association is conducted by the board of directors, all of the rules of the association are made by the board of directors?

Mr. Finkelstein: Same objection.

A. What does he mean by "all the rules"; I think amendments to the by-laws can be made through submission by the member and upon revision by the board is submitted to the general membership.

Q. At least the board has to ratify them before they become effective?

Mr. Finkelstein: Same objection; the articles of association [fol. 1222] are the best evidence.

A. I would say so.

Q. You are not familiar with the practices of the association in determining license fees, are you, and things of that kind, for users?

A. I have heard it discussed; I haven't any intimate knowledge.

Q. You have no intimate knowledge of those particular subjects?

A. Of which?

Q. That is, of the business and management of fixing the license fees of users, dance halls, hotels, radio stations and so on?

A. No.

Q. Those things are left to the business management and officers of the association?

A. The business management and a committee appointed to go over it and discuss it. I was at one time designated to serve on the rate committee. One time we did meet with the user, but at that period I got sick and had to absent myself from the discussion. But the members of the board in addition to the management fix the rates or fix the policy of making the rates.

Q. But you don't pretend to have any personal intimate [fol. 1223] knowledge of that particular subject?

A. No.

Q. You don't pretend to be an expert on that subject in any wise?

A. No.

Q. So that the answers that you have given to all of the questions asked by Mr. Frohlich pertaining to the practices which might or might not be necessary in Nebraska were prompted more by lack of knowledge of the subject than by your intimate knowledge of the subject?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial; assuming a state of facts not in existence.

A. If you will find out any particular fact that I am not supposed to be acquainted with, I will admit it. For instance, what?

Q. Let me ask you this. Mr. Frohlich asked you a good many questions about what you might or might not have to do in the State of Nebraska relative to the employment of attorneys and business agents and music experts who were detectives in the event the law as he interpreted it to you in those questions was in force in Nebraska. Now, then, pertaining to those questions your answers were prompted more by a lack of knowledge on the subject than by your [fol. 1224] expert knowledge on the subject?

A. I know this, that if—

Q. Just wait a minute. Let me ask you to do this. Can you answer that yes or no?

Mr. Finkelstein: He can't answer it yes or no.

A. I was going to tell you that. I couldn't answer that yes or no. I would have to qualify.

Q. Let me ask you this. At least your answers on those subjects were not prompted by any expert knowledge that you have of the situation, isn't that true, yes or no?

Mr. Finkelstein: That calls for a conclusion, and whether or not this witness is an expert is a question of law and not a question on which this witness is competent to testify.

A. I wouldn't say.

Q. At least you don't have any intimate knowledge of that subject? Yes or no?

A. I have intimate knowledge of knowing how to go about abating an infringement; I know that much.

Q. Based on your personal experience?

A. Based on my knowledge, my experience, as a member of ASCAP; based upon—

[fol. 1225] Q. Based upon what they do?

Mr. Finkelstein: Let him answer.

Q. Your experience along that line has been with ASCAP?

A. Covering infr. ments?

Q. Yes. That is your only experience?

A. Yes, that is my only experience.

Q. Prior to the time you joined ASCAP you had no experience along that line?

A. No.

Q. How long have you been a member of the board of directors of ASCAP?

A. I served around eight years.

Q. The only time that you ever met with any users in order to discuss the fixing of prices for licenses to be charged users was the one occasion when you became sick and had to leave?

A. I have talked with many establishments I have visited in the last ten years as to the rates ASCAP charged, and general information about ASCAP, with hotel men, cabarets.

Q. At any time you didn't pretend to enter into any technical discussion as to the manner in which the rates were determined by ASCAP?

A. I always did figure that the rates should be charged [fol. 1226] in accordance with the importance of their operations and the use they made of our works.

Q. And outside of the general discussion of the subject, you didn't enter into a technical discussion of how the rate was fixed by the rate committee?

A. No.

Q. And you never have attempted to study that feature of the business?

A. I have studied it since I have become a member of ASCAP and I have acquainted myself with it.

Q. That is, with the technical phases taken into consideration?

A. I have listened to discussions and I think all rate is

generally based upon the importance of our contribution to the user's operation as a whole.

Q. In these discussions with users that you have had within the past ten years, have you discussed with any of them the value of the use of your own particular copyrights, have you?

A. I don't remember.

Q. You have never sat down with any one of the users and tried to analyze for yourself and himself the value of any one of your particular compositions?

A. No.

[fol. 1227] Q. You have never attempted to do that with your publisher or publishers?

A. I have had general conversations with publishers but I can't recall any single instance.

Q. You have never sat down with anyone else who from business experience is supposed to be expert in the matter of fixing an application of public performance rights, and discussed the value of your public performance rights with him?

A. Not as an individual, but performance rights in general, yes, I have discussed it with Mr. Frohlich, Mr. Paine, Mr. Mills and members of ASCAP.

Q. These performance rights of the entire ASCAP catalogue?

A. Not necessarily; performance rights of the songs in general.

Q. But you have never attempted to ascertain from any of these experts the value of the public performance rights of your own particular works, have you?

A. As an individual, no.

Mr. Nye: I think that is all.

Re-direct examination.

By Mr. Frohlich:

Q. Mr. Leslie, has any user of music in any talk with [fol. 1228] you ever asked you or suggested to you that you give him a license of your own compositions alone?

A. No, never.

Q. Would a single song of yours be of value to any user?

A. I don't know; I just can't say; it all depends on the circumstances under which it was used.

Q. Isn't it a fact that all users of music have to have many songs, musical compositions, to make up a varied and balanced program?

Mr. Nye: I object to the question; no sufficient foundation for knowledge.

A. Yes. They say, variety is the spice of life.

Q. You have been around in cabarets and night clubs for many years in New York?

A. Yes.

Q. You have been in hotels where music was performed?

A. Yes.

Q. You have heard music over the radio daily?

A. Yes.

Q. In any of the performances given by any of these users I have mentioned, isn't it a fact that there were a number, in fact many compositions played?

A. Yes.

[fol. 1229] Q. Is there any user that you know of that could get along on one composition for a day or an evening, or any one person's compositions?

A. I don't know of any.

Q. The user would have to have a lot of numbers, wouldn't he?

A. I would say so. If I were a user I would like to have a lot of numbers.

Mr. Frohlich: That is all.

By Mr. Nye:

Q. You have never been in the entertainment business yourself, have you?

A. No.

Q. The professional copies are given away by your publishers?

A. For use by professionals, for professional purposes, that is what you mean?

Q. Yes.

A. We receive nothing for that.

Q. Those copies are not in the sum-total of your publications?

A. No.

Q. You do get paid on these orchestrations of your numbers?

[fols. 1230-1239] A. I get paid on the printed orchestrations of my songs.

Q. Most of those are given away?

A. No, very few are given away; they have cut that down to almost nothing.

Mr. Nye: That is all.

Mr. Frohlich: That is all.

(Depositions closed.)

[fol. 1240] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATE OF CALIFORNIA,

County of Los Angeles,

Southern District of California, Central Division, ss:

Depositions of Jerome Kern and Sigmund Romberg, the witnesses produced and examined at the office of Philip Cohen, Esq., Room 1217, 707 South Hill Street, City of Los Angeles, County of Los Angeles, State of California, before William J. Stahly, a Notary Public in and for the County of Los Angeles, State of California, residing in said County and State, this 15th day of June, 1938, at 10:00 o'clock in the forenoon of that day, the undersigned William J. Stahly, Notary Public, having held the said hearing at said time and place, pursuant to the notice of taking depositions, [fol. 1241] and stipulation dated March 28, 1938, and stipulation dated April 23, 1938 and stipulation dated May 11, 1938 and stipulation dated May 28, 1938, in the above entitled action pending and at issue therein between Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, et al., complainants, versus Harry R. Swanson, as Secretary of State of Nebraska, et al., defendants; complainants appearing and being represented by Louis D. Frohlich, Attorney at Law, and the defendants neither appearing at the said hearing nor being represented by counsel.

The said Jerome Kern and Sigmund Romberg, being first duly sworn by the undersigned, William J. Stahly, Notary Public in and for the said County and State, to

testify to the truth, the whole truth and nothing but the truth, being thereupon examined, testified as follows:

DEPOSITION OF JEROME KERN.

Direct examination.

By L. D. Frohlich, of Counsel for Plaintiffs.

Examination of Jerome Kern.

By Mr. Frohlich:

Q. What is your full name and address, Mr. Kern?

A. Jerome David Kern.

Q. And you reside where?

A. 917 North Whittier Drive, Beverly Hills, California.

Q. What is your occupation?

[fol. 1242] A. I am a composer of music.

Q. How many years have you been engaged in that occupation?

A. Since 1903. That is 35 years.

Q. Have you specialized in the composition of any particular type of music?

A. Yes.

Q. And what type is that?

A. Musical comedy and light opera.

Q. I show you a list of compositions and ask you to look at this list and tell us whether it fairly sets forth the compositions that have been composed by you during the past 35 years?

A. Well, this is a list arranged alphabetically and as nearly as I can see at a glance it approximates an accurate list my published works.

Q. I will offer that in evidence as complainants' Exhibit 1.

(List referred to was received by the Notary Public, marked Complainants' Exhibit 1, and the same is attached to and made a part of this deposition.)

Q. Now, Mr. Kern, in composing these compositions did you from time to time have collaborators who wrote the words or lyrics of these compositions?

A. Oh, yes.

Q. And after these compositions were written and composed by you and your collaborators did you

[fol. 1243]

have these compositions published by music publishers from time to time?

A. Yes. You mean c-ronologically? I have not immediately after.

Q. At some time?

A. Usually they are copyrighted and published after they were in a play. In other words material on a shelf is rarely published.

Q. In composing your music of these compositions that appear in plaintiff's exhibit 1 did you have in mind that these compositions would first be performed on the stage before they were published?

A. Almost invariably.

Q. And was it the practice with respect to your compositions to have them performed on the stage before they were actually published?

A. Yes.

Q. And until these compositions of yours that appear in complainants' Exhibit No. 1 were actually published was there any copyright taken out on these compositions, if you know?

A. Almost without exception no copyright.

Q. And when for the first time was copyright taken out on these compositions of yours?

[fol. 1244] A. Almost immediately after a production, if the importance of the number merited production at all.

Q. Let's take some of these comic opera, light operas or dramatic-musical works to which you wrote the music, did they contain individual compositions?

A. Yes.

Q. And in addition to that individual musical composition did these works also contain various ensembles, opening choruses,—

A. Yes, and dance and incidental music.

Q. What was the important music and the music having the greatest commercial value in these theatrical-musical compositions?

A. The theme songs, the love songs, the comedy songs, and so forth.

Q. And these songs that you have named were they songs that were eventually published by your publishers and sold to the public?

A. Yes. In other words they became sort of a trade mark of the particular operetta and identified with it.

Q. Did many of your compositions so published attain financial success?

A. Yes, many of them.

Q. Did your publisher sell many thousands of copies [fol. 1245] of your musical compositions over the years?

A. In the early days many thousands of copies.

Q. Which publishing firm for the most part published your musical compositions over the years?

A. T. B. Harms Musical Company.

Q. Is that a large music publishing firm?

A. It is a large and important musical publisher.

Q. And did this publishing firm pay you royalties on the individual compositions which you composed?

A. Every copy that they sold they paid a royalty on.

Q. What was the usual royalty you received per copy of sheet music?

A. Three cents a copy for the music.

Q. And your collaborator who wrote the lyrics would also receive something on that musical composition?

A. The same amount. Always split fifty-fifty.

Q. Did you have any individual contract with T. B. Harms on the compositions in composing each one?

A. No.

Q. Did you have any contract?

A. No. Very close association with some people who were friends.

Q. Is it your testimony that there was no contract?

[fol. 1246] A. There was, through the years, an all understanding.

Q. Now, under the arrangement or understanding that you had with T. B. Harms, did you give them performing rights in your compositions enumerated in Exhibit 1?

A. No.

Q. Did you ever give to any publisher in the United States or elsewhere the performing rights of any of your compositions?

A. No.

Q. Did you reserve those performing rights to yourself?

A. Entirely to myself and collaborator.

Q. Of course when I speak of you, I speak of you and your collaborator?

A. Yes.

Q. How many types of performing rights are there?

A. Grand right or stage right, as we call it, and the small or non-dramatic performing right.

Q. Now, how do you define the grand or stage right?

A. That is the right leased or sold to a manager, a producing manager, for the right to use the composition in a play performed by human beings on the stage.

Q. And how do you define non-dramatic performing [fol. 1247] right or small right or *small right*?

A. The small right is the right to use in public for profit whether vocally or instrumentally, the musical composition for purposes of entertainment.

Q. Were the performing rights of your musical compositions, both non-dramatic and stage rights of value to you?

A. Yes, they are my first source of livelihood.

Q. Did you receive any royalty from the producers of plays or of dramatical musical works in which your musical composition were performed on the stage?

A. Yes, either in cash payment or in percentage of the box office intake; and as my importance and standing increased, naturally the terms were better.

Q. And were these sums you received from performing rights on the stage substantial over the years?

A. Yes.

Q. Can you tell us how much you received from the stage rights of all of your musical compositions on an average each year during this period?

A. Well, I would say that a successful musical play with a run in the metropolis and subsequent road runs yielded around \$50,000.00.

Q. For the entire run of the production?

A. For the run of the production.

[fol. 1248] Q. Can you mention a few of the more successful plays for which you wrote the music?

A. Yes.

Q. Will you give us that list, Mr. Kern?

A. Sally, Sonny, Showboat, The Cat and the Fiddle, Music in the Air, Sweet Adeline, Stepping Stones, Very Good Eddie, Leave it to Jane, Oh Lady Lady, Good Morning, Dearie, and many others.

Q. From time to time as your publisher published the compositions that are set forth in Exhibit No. 1, did your publisher grant to manufacturers of mechanical records the right to manufacture records and piano rolls of your musical compositions?

A. Frequently.

Q. And in granting these rights were you consulted?

A. Yes.

Q. Were you a party to the contract with the manufacturers of records and rolls?

A. No.

Q. Who made the contracts, just the publisher?

A. The publisher and the manufacturer. Well, I had a participating interest.

Q. And when the publisher received any royalties by way of the manufacturer of these records and rolls, did he pay you a percentage of the royalties from time to time?

[fol. 1249] A. Yes. I got half of all the publisher received.

Q. Were your compositions played in the State of Nebraska from time to time, if you know?

A. Yes.

Q. On what do you base your knowledge that your compositions were played in that state?

A. Because a great many of my shows toured the country and were routed through almost every large city, including Omaha and other cities in the state of Nebraska, and millions of records were sold in the state of Nebraska, and were of course played in that state. I have composed a great many songs that have been used in motion pictures, and these motion pictures have been played in all the cities or towns in the State of Nebraska where there are motion picture theaters.

Q. Mr. Kern, in looking over complainants exhibit No. 1, I notice under the column "renewed," various compositions with dates and the names of publishers. Would you explain for the record what that column indicates?

A. It indicates that after the life of the copyright, namely 28 years, the copyright is renewed by the staff of the publisher, for convenience only, in the name of the author and the composer.

Q. Have these various compositions that appear on the column "renewed" been renewed for your account and benefit? [fol. 1250] efit?

A. Yes.

Q. And do the renewals belong to you?

A. Yes.

Q. Have these renewals of the compositions a commercial value to you?

A. Yes.

Q. And will all of your compositions be renewed from time to time as the original date of copyright expires?

A. Yes.

Q. And when these compositions are renewed do you continue to receive royalties from the publishers of the composition?

A. Yes.

Q. And do you and will you continue to receive compensation by way of royalties from musical productions of these compositions?

A. Yes. There have been many instances where songs that have been dormant have been re-issued by the record people. Several are on the market now, remakes of old compositions, and they receive the same treatment. They are renewed and receive the same treatment as new compositions.

Q. How many compositions of yours have been renewed?

A. Approximately 48 to date.

[fol. 1251] Q. What value do you place upon the renewal of these 48 compositions?

A. I consider them worth for the next 28 years, \$1,000 a composition.

Q. And would the sum of \$1,000.00 a composition as the value be true with respect to your other compositions which will be renewed from time to time?

A. I would consider that an absolute minimum. I think \$1,000.00 is too little. I wouldn't sell a motion picture concern a copyright for \$1,000.00. I would ask for renewal rights.

Q. Mr. Kern, are you a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. What is that Society?

A. That is a society formed for the protection of copyright owners, of authors, composers and publishers, and the owners or proprietors of copyrights.

Q. And what is the function of that society?

A. It licenses non-dramatic performing rights of the compositions of its members and collects license fees for these licenses, for the license to publicly perform for profit those compositions.

Q. When was that society formed?

A. 1914.

[fol. 1252] Q. Were you one of the founders?

A. I was one of the original members.

Q. You were one of the original members?

A. Yes.

Q. When did you join that society, about?

A. 1914.

Q. And have you been a member continuously since 1914?

A. Yes.

Q. And have you executed contracts from time to time with the American Society of Composers, Authors, and Publishers?

A. Yes.

Q. I show you this contract dated September 18, 1935, and ask you whether you recognize the signatures on the contract?

A. That is my signature.

Q. And do you recognize the signature of the person who signed for the American Society of Composers, Author's and Publishers?

A. Yes.

Q. And whose signature is it?

A. Joseph Young.

Q. And he is an officer of the Society of Composers, Authors and publishers?

[fol. 1253] Yes.

Q. I will offer this in evidence.

(Contract referred to, was received by the Notary Public, marked complainants Exhibit No. 2, and the same returned to Mr. Frohlich).

Q. I show you, Mr. Kern, what purports to be a photostatic copy of complainants exhibit No. 2, and ask you if that is a true and correct copy of complainants exhibit No. 2?

[fol. 1253] A. Yes.

Q. I will offer that in evidence and as complainants exhibit No. 3.

(Photostatic copy of complainants exhibit No. 2, was received by the Notary Public, marked complainants Exhibit No. 3, and the same is attached to and made a part of this deposition).

Q. Were you a member of the Board of Directors of that society?

A. Yes.

Q. When were you such member, approximately?

A. I have been a member of the Board of Directors for about ten years.

Q. Do you receive royalties from the American Society of Composers, Authors, and Publishers from time to time? [fol. 1254] A. Yes.

Q. What royalties did you receive from the Society for the year 1936?

A. \$14,576.16.

Q. What royalties did you receive in 1937?

A. \$17,480.65.

Q. Does the American Society of Composers, Authors and Publishers employ local representatives throughout the United States?

A. Yes.

Q. Does it employ counsel?

A. Yes.

Q. Now, if you were acting independently of the American Society of Composers, Authors and Publishers or any other group or combination, would you be able to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the state of Nebraska?

A. No.

Q. Would you be able at the time of the publication and sale of your musical compositions within the state of Nebraska to tell the amount of monies that would be a reasonable charge for the performing rights of your compositions within that state?

A. No.

[fol. 1255] Q. Would you, in order to determine and fix a price to be charged for the performing rights of your compositions in the State of Nebraska, be required to obtain information and data with reference to use of your musical compositions within that state?

A. Certainly.

Q. And in order to acquire such information and data would you be able to do that yourself?

A. No.

Q. Would you be compelled, in order to acquire such information and data, to employ investigators and representatives in the state of Nebraska?

A. In great numbers.

Q. Would it be necessary for you to acquire information and data with respect to the users of musical compositions

in the State of Nebraska to determine the nature of various establishments in that State?

A. Certainly.

Q. Would you be required to obtain information and data with reference to the nature of the use of your compositions by these establishments in that state?

A. Yes.

Q. Would the employment of agents and representatives in the State of Nebraska entail expense to you?

[fol. 1256] A. Expense in actual money and more important, in time. I would have time for little else.

Q. What do you estimate it would cost you to employ a man or a number of men to go around in the state of Nebraska to ascertain information with respect to the establishments that use your musical compositions in that state?

A. It would cost me anywhere from five to ten thousand dollars a year. I would have to have a man, skilled in music, and who would want at least fifty or seventy-five dollars a week, and I would have to pay his hotel bills, traveling expenses, and I would have to employ a number of such men, and I would have to have an office in the state of Nebraska. All of that I would estimate would cost me anywhere from five to ten thousand dollars or more a year.

Q. In order for you to protect yourself with respect to infringement in the State of Nebraska would you be compelled to employ investigators to listen to radio establishments in that state?

A. Yes, and dance halls.

Q. Would you be compelled to employ investigators to go around to dance halls, cabaret, motion picture theaters, hotels, and other places of amusement and entertainment in that state?

A. Yes.

[fol. 1257] Q. Would such investigators entail expense to you?

A. Certainly.

Q. What would you estimate that to be?

A. Another five or ten thousand dollars.

Q. Would you have to employ a lawyer in the state of Nebraska in infringement suits for your musical compositions have been infringed in that state?

A. Yes.

Q. What would you estimate a lawyer would cost you for that purpose?

A. Another five thousand dollars a year.

Q. Are you financially able to bear such an expense to protect your musical compositions in the state of Nebraska?

A. No. The cost of such representation would be much more than my receipts.

Q. Is the American Society of Composers, Authors and Publishers doing this service for you?

A. Yes.

Q. And would you be able to continue your present livelihood as a composer without the aid of the American Society of Composers, Authors and Publishers?

A. Certainly not.

Q. Would you be able, acting alone and independently [fol. 1258] today, to fix a price on each and everyone of your musical compositions within the state of Nebraska for the purpose of television?

A. Not a fair price.

Q. And why?

A. Because television today is in the experimental stage and we do not know how extensive it may become or how important the use of it will be. It may affect other uses and may destroy the value of other uses, and until television becomes an accepted fact, no one today in my profession is able to judge with any degree of accuracy what a fair price for the public performance for profit would be on my compositions.

Q. Are you willing to permit the manufacturers of mechanical records and musical roles of your compositions to fix a price on their records and roles for certain performance for profit of your compositions?

A. No.

Q. Have these manufacturers of records and roles any contractual right as far as you know to license users in the state of Nebraska to publicly perform or profit such records and roles and collect fees therefrom?

A. No.

Q. Are you willing to give them such right?

A. No.

[fol. 1259] Q. Are you able in any way to compel such manufacturers of records and roles to collect royalties for the public performance for profit of your compositions and pay you a share thereof?

A. No.

Q. Are your musical compositions frequently performed by radio broadcasters outside the state of Nebraska?

A. Yes, very often.

Q. Are your musical compositions performed by radio outside the State of Nebraska on National hook-ups?

A. Frequently.

Q. And in these hookups are there radio stations within the state of Nebraska that re-perform your musical compositions so performed outside the state of Nebraska?

A. Yes.

Q. Are you able to control the re-performance or re-broadcast of your compositions outside the state of Nebraska to be re-performed and re-broadcasted within the state of Nebraska?

A. No.

Q. Are you able to control the performance of your compositions on motion pictures in which your compositions appear within the state of Nebraska?

A. No.

Q. Please state how your musical compositions are turned [fol. 1260] over to producers of motion pictures?

A. I contract with producers of motion pictures to write musical compositions that appear in their pictures. This form of contract is known as synchronization. The compositions are synchronized with the action of the picture and are re-produced when the picture is shown on the screen. The producers of the motion picture distribute their pictures throughout the United States and foreign countries, and these pictures so distributed by them appear upon the screen of the exhibitors within the state of Nebraska. I have no control over the manner of distribution. That is purely within the control of the motion picture producers and distributors.

Q. Is it desirable from your viewpoint as a composer of production music to affix to the sheet music of the compositions sold within the State of Nebraska a price for the public performance for profit of your compositions at the time the compositions are sold within the state of Nebraska?

A. No.

Q. Is it desirable from a commercial point of your compositions to withhold the public performance for profit of your compositions from time to time even though the actual sheet music is sold and published?

A. Yes.

[fol. 1261] Q. Has that been the practice throughout the years with your musical compositions?

A. Yes.

Q. Please explain the reason for this?

A. My compositions have been, as I testified before, written for stage productions. While production is running both in big cities and on tour, it is desirable to prevent others from performing these compositions, because such performance would be in competition with the particular stage production, and would destroy the commercial value of such production. Therefore, I have invariably restricted the public performance of my compositions until these compositions and the plays in which they appeared have run their course. That is true with all production writers. To permit these compositions to be performed indiscriminately for profit would jeopardize the commercial value of the compositions and the stage productions in which they were performed and for which they were written. For that reason I cannot and will not determine and fix a price to be charged for the public performance for profit of my compositions at the time of the publication of these compositions. Many a composition is published that has no value at all from a view point of sheet music sales. Its chief and most often its only value is for the stage production performance or the grand right. These compositions are [fol. 1262] always restricted by me and by my publisher.

Q. Under the Nebraska statute you lose that valuable right?

A. Absolutely.

Q. Has the broadcasting of your compositions upon the radio affected the sale of the sheet music of your compositions, if you know?

A. Yes.

Q. Are you familiar with the music publishing business generally?

A. Yes.

Q. Do you know whether it was the usual thing for a popular musical composition prior to the advent of radio to sell a million copies?

A. Yes, frequently.

Q. Have there been any sales of musical compositions to the extent of million copies or more since 1922?

A. Not that I know of.

Q. What does radio do to the popularity of a musical composition?

A. Radio performances of a popular composition are over-done. Frequently the same song is played by many stations throughout the country two or three times a night. For that reason a musical composition, no matter how popular or its merit loses its popularity and vogue after a period of five, six or seven weeks. That adversely affects the [fol. 1263] sale of sheet music and other rights with respect to the composition. Radio just simply over-popularizes and kills music today, making it a nuisance rather than an entertainment.

Q. What value do you place on your contract, complainants exhibit 2 and 3?

A. Considering the income that I have derived from the Society during the years and considering that — have the right to renew my contract with the Society each five years, and considering the protection which the Society gives me, I consider my contract with the Society worth at least \$250,000.00.

Q. Are you willing to have your contract with the Society declared invalid and void?

A. No.

Q. Have you any agent or representative within the state of Nebraska at the present time?

A. No.

Q. Do you transact business within the state of Nebraska at the present time?

A. No.

Q. Are you domiciled within the state of Nebraska?

A. No.

Q. Are you a citizen of the United States?

A. Yes.

[fol. 1264] Q. Before you domiciled in the state of California what was your domicile?

A. New York state.

Q. Now, prior to the time that you joined up with the American Society, Composers, Authors and Publishers were your musical compositions performed publicly for profit in the United States?

A. Yes.

Q. Did you receive any revenue from such publication?

A. No.

Q. Did any user anywhere in the United States ever come to you with the request to perform publicly for profit your musical compositions?

A. No.

Examination closed.

(S.) Jerome D. Kearn.

Subscribed and sworn to before me this 18th day of June, 1938.

(S.) William J. Stahly, Notary Public in and for the County of Los Angeles, State of California.

[fol. 1265] DEPOSITION OF SIGMUND ROMBERG

6/15/1938.

SIGMUND ROMBERG, having been first duly sworn under oath by the Notary Public to testify the truth, the whole truth, and nothing but the truth relative to the above entitled action, testified as follows:

Direct examination by L. D. Frohlich, of Counsel for Complainants.

Examination of Sigmund Romberg.

By Mr. Frohlich:

Q. Mr. Romberg, what is your full name?

A. Sigmund Romberg.

Q. Where do you reside?

A. 1023 North Roxbury Drive, Beverly Hills, California.

Q. Are you a citizen of the United States?

A. Yes.

Q. Where was your domicile prior to coming to California?

A. New York City.

Q. What is your occupation?

A. Musical composer.

Q. And how many years have you been such a composer?

[fol. 1266] A. Since 1910.

Q. Is that your only means of livelihood?

A. Yes.

Q. Have you specialized in the composition of any particular type of music?

A. Yes, stage productions and moving pictures.

Q. Will you give us a list of some of the better known stage productions of which you composed the music?

A. Maytime, Soldier Boy, The Magic Melody, Blossom Time, Student Prince, My Maryland, The Desert Song, New Moon, Forbidden Melody, Mayfair.

Q. Give us the names of some of the motion pictures for which you wrote the music.

A. Viennese Nights, Children of Dreams, The Night is Young, The Girl of the Golden West.

Q. I show you a list of musical compositions purported to have been composed by you and ask you if that is a true and accurate list of your compositions?

A. It is.

Q. I will offer that in evidence as Complainants Exhibit 4.

(The list referred to was received by the Notary Public and marked Complainant's Exhibit 4, and the same is attached to and made a part of this deposition.)

Q. How many renewals of your compositions have there been?

[fol. 1267] A. Only one so far.

Q. What is the name of that renewal?

A. Memories.

Q. Was that the renewal of the composition Memories?

A. Yes.

Q. Now, from time to time will your compositions be ripe for renewal?

A. Yes.

Q. And do you intend and propose to renew these compositions?

A. Yes.

Q. Have these compositions value for you with respect to renewal periods?

A. Naturally.

Q. And will you continue to receive royalties and emoluments from the renewal of your compositions?

A. Yes.

Q. What do you value each of your compositions with respect to renewal rights?

A. At least \$1000 a renewal.

Q. Were your compositions published from time to time by various publishers?

A. Yes.

Q. And did you in your contracts with these publishers [fol. 1268] ever give any of the publishers the right to publicly perform for profit your compositions?

A. The publishers?

Q. Yes.

A. No, I did not.

Q. Did you reserve that right yourself?

A. Yes.

Q. Did you also reserve yourself the stage right for these compositions?

A. Yes.

Q. As a matter of fact a great many of your compositions were played on the stage a long time before they were finally released, isn't that so?

A. That is right.

Q. And was it a customary thing when you wrote the music for a dramatical-musical work to restrict *and* and reserve the public performance for profit of such composition during the run of the particular play?

A. Yes.

Q. And what was that due to?

A. Well, so that the musical material in the show should remain fresh and interesting, and I didn't want any composition between outsiders and the people who had spent money, thousands of dollars, in producing these shows. It was a form of protection.

[fol. 1269] Q. Assuming you were compelled to act independently and not in combination with other composers, could you, under the Nebraska statute, reserve this right of public performance for profit and the stage right if you were compelled to determine and fix the price to be charged for the use or rendition of that musical composition in the state of Nebraska?

A. No, I couldn't. I would be utterly helpless.

Q. From time to time have you received royalties from publishers for sheet music?

A. Yes.

Q. What was the usual royalty?

A. Three cents on each copy for sheet music.

Q. What did your collaborator receive?

A. He received about the same.

Q. If there were two collaborators?

A. They split up between them.

Q. Did you also receive from your publishers from time to time royalties from the reproduction of your compositions for records and musical rolls?

A. Yes.

Q. How were these records and music rolls manufactured?

A. They were manufactured under an arrangement with the publisher and he received usually the two cents per roll [fol. 1270] or record which the copyright law fixes as the compulsory price, and I received usually one half of what the publisher received.

Q. Did you at any time make a special contract with any manufacturer of rolls or records for the manufacture of such rolls and records?

A. No. That was always done by my publisher.

Q. Have you the right to go to any manufacturer of music rolls and records and compel him to fix a price for the public performance of profit of such rolls or records within the state of Nebraska?

A. No.

Q. Would you want to give any manufacturer of music rolls and records of your compositions the right to collect royalties in the state of Nebraska for the public performance for profit of your compositions?

A. No.

Q. Have you any control over the distribution of the rolls and records manufactured by these manufacturers of your compositions in the past?

A. No.

Q. Have you any control over the method of distribution of any of the motion pictures in which your compositions appear?

A. No.

Q. Have your compositions been played in the state of [fol. 1271] Nebraska over the years?

A. Yes, many times.

Q. Did the plays for which you wrote the music tour the state of Nebraska?

A. Yes.

Q. Have musical rolls and records of your compositions been sold within the state of Nebraska, if you know?

A. Yes.

Q. And have sheet music of your compositions been sold within the state of Nebraska?

A. Yes.

Q. Have you any control at the present time over any of the sheet music that has been sold in the state of Nebraska of your compositions?

A. No.

Q. Are you able to determine and fix a price at the present time for the public performance for profit of your compositions in the state of Nebraska?

A. No.

Q. Have you any information or data with respect to the establishments where music is used in the state of Nebraska at the present time?

A. No.

Q. What would you have to do in order to acquire such [fol. 1272] data and information?

A. I would have to employ an agent or representative within that state, or maybe a number of such agents and representatives. I would have to pay salaries of \$50, \$75 or \$100 a week to such agents. I would have to employ an investigator to go around and see that my compositions are not infringed. I would have to employ a lawyer, and from my past experience of people experienced in music and the salaries they demand I am sure that would involve an expense of over \$10,000.

Q. Are you able financially to bear that expense?

A. No.

Q. Is the Society doing this service for you at the present time?

A. Yes.

Q. Would you be able to receive any monies for the public performance for profit for your compositions in the state of Nebraska if it were not for the Society?

A. No.

Q. If you were required to act independently and not in combination with anyone could you at the present time affix to the sheet music of your compositions sold in the state of Nebraska any price for the television rights of your compositions?

[fol. 1273] A. No.

Q. Have you any information presently that would assist you to fix a fair price for such television use in the state of Nebraska?

A. No.

Q. Is there any way in which you could acquire such information?

A. No.

Q. If you were compelled to act alone and independent to fix the price for public performance for profit in the state of Nebraska would that interfere with the production of the stage plays for which you write music?

A. Yes.

Q. Would it jeopardize the commercial value of these stage plays?

A. Yes.

Q. Would it jeopardize the investment of the producers of these stage plays?

A. Yes.

Q. Would it result in competition between the producers of these stage plays and users of the musical compositions within the state of Nebraska?

A. Yes.

Q. Is it desirable, from a commercial standpoint, with [fol. 1274] respect to your musical compositions, to defer the public performance for profit of many of your compositions?

A. Yes.

Q. Is that due to the nature of the business?

A. Yes.

Q. And does the Nebraska statute prevent you from exercising that right?

A. Yes.

Q. Mr. Romberg, are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. And when did you join that Society?

A. 1917.

Q. And have you been a continuous member since that day?

A. Yes.

Q. Have you presently a contract in force with that Society?

A. Yes.

Q. I show you this document, dated September 16th, 1935,

and ask you whether you recognize the signatures on the document?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. Is that the signature of Joseph Young, secretary of [fol. 1275] the Society?

A. Yes. I am familiar with it.

Q. I will offer this in evidence.

(Document entitled Agreement between Sigmund Romberg and American Society of Composers, Authors and Publishers, was received by the Notary Public, marked Complainant's Exhibit No. 5, and returned to Mr. Frohlich.)

Q. I show you what purports to be a photostatic copy of Plaintiff's Exhibit No. 5 and ask if this is a true and accurate copy of this exhibit?

A. Yes.

Q. I will offer this in evidence as Complainant's Exhibit 6.

(Photostatic copy of Complainant's Exhibit 5, namely Agreement between Sigmund Romberg and American Society of Composers, Authors and Publishers, was received by the Notary Public, marked Complainant's Exhibit No. 6, and the same is attached to and made a part of this deposition.)

Q. Were you at one time a member of the board of directors of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. Can you tell us what revenue you received from the Society in the year 1936?

[fol. 1276] A. \$14,576.16.

Q. What royalties did you receive from the Society in 1937?

A. \$17,480.65.

Q. You consider the contract, Plaintiff's Exhibit 5 and 6 of value to you?

A. Yes.

Q. And what do you value this contract at?

A. At least \$250,000.

Q. Are you willing to have this contract declared invalid?

A. No.

Q. Prior to 1917 did you receive any compensation for the public performance for profit of any of your compositions?

A. No.

Q. Did ever any user of music in the United States ever come to you prior to 1914 and request you to license him to publicly present for profit any of your compositions?

A. No.

Q. Is the Society doing something for you which you are unable to do for yourself?

A. Yes.

Q. And do you want the Society to continue to function [fol. 1277] in that manner for you?

A. Yes.

Q. You have spent practically the greater part of your life in the musical profession, haven't you?

A. Yes.

Q. And you are familiar with the profession?

A. Yes.

Q. And the problems of the members of the profession?

A. Yes.

Q. Do you know if any composer in the United States ever received any compensation for the public performance for profit of his compositions prior to the time the Society was formed?

A. As far as I know, and with my familiarity with the profession I do not know of a single composer in the United States who ever received any monies for public performance for profit of his compositions before the Society began to function.

Q. Are your musical compositions performed on radio broadcasts outside the state of Nebraska?

A. Yes.

Q. And are your musical compositions frequently re-broadcast by radio broadcasting stations within the state of Nebraska?

[fol. 1278] A. Yes.

Q. Is that done by means of the hook-up?

A. Yes.

Q. Are you able to control the re-broadcast of these compositions within the state of Nebraska that have originally been broadcast outside the state of Nebraska?

A. No.

Q. What is the usual price charged by your publisher for the sheet music of your compositions?

A. 22 cents per copy.

Q. Has that been the average charge over the period of years over which you have been composing music?

A. Yes.

Q. These copies of sheet music are purchased by members of the public from time to time, isn't that right?

A. Yes.

Q. Now, what class of the public is the greatest purchaser of sheet music of your compositions?

A. Singers, public schools, private performers, amateur performers.

Q. If you were compelled to affix to the copy of sheet music the sales price for all purposes including public performance for profit would that adversely or otherwise effect the sale of sheet music of your compositions?

[fol. 1279] A. Yes.

Q. How would it effect it?

A. If I were compelled to follow this Nebraska statute and place on the copy of sheet music a price for all users so that the purchaser would have to pay all of that price when he purchased the sheet music, there isn't a single purchaser in the state of Nebraska who would buy a copy of my music, because he couldn't afford it; and the result is that the sale of my music would so fall off and diminish at once practically to the vanishing point within the state of Nebraska.

Q. Are you domiciled in Nebraska?

A. No.

Q. Were you ever domiciled there?

A. No.

Q. Have you any agent or representative in that state?

A. No.

Q. Do you transact business in that state?

A. No.

Examination closed.

(S.) Sigmund Romberg.

Subscribed and sworn to before me this 18th day of June, 1938. William J. Stahly, Notary Public in and for the County of Los Angeles, State of California.

[fol. 1280]

STATE OF CALIFORNIA

County of Los Angeles, Southern District of California, Central Division, ss:

I, William J. Stahly, a Notary Public in and for the County of Los Angeles, State of California, residing in the city of Los Angeles, County of Los Angeles, State of California, do hereby swear:

That Jerome Kern and Sigmund Romberg, the witnesses produced pursuant to the notice of taking depositions and the stipulations dated March 28th, 1938, April 23rd, 1938, May 11th, 1938 and May 28th, 1938, personally appeared before me on the 15th day of June, 1938, at 10:00 o'clock in the forenoon of that day, the undersigned Notary Public being neither of counsel nor kin to either party, having held the said hearing at the said time and place, at the office of Philip Cohen, Esq., Room 1217, 707 South Hill Street, City of Los Angeles, County of Los Angeles, State of California, and being by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and being by me duly cautioned to testify to the whole truth and nothing but the truth, the said witnesses thereupon answered to the several questions propounded to them by Louis D. Frohlich, of counsel for [fol. 1281] the Complainants, as shown in the foregoing depositions, and there being no appearances on behalf of the defendants, and a telegram having been received dated June 13th, 1938, which is hereunto annexed, which telegram stated, "Nebraska Attorney General will not appear for depositions June fifteenth," and which was signed by Barlow Nye, Administrative Assistant Attorney General, of the State of Nebraska, and the said witnesses having deposed to all the matters contained therein as shown thereby; and the Complainants' Exhibit No. 3 having been examined and compared by me with Complainants' Exhibit No. 2, and having been found to be a true and accurate copy of Exhibit No. 2; Exhibit No. 6 having been examined and compared by me with Complainants' Exhibit No. 5, and having been found to be a true and accurate copy of Exhibit No. 5;

I further swear that when said depositions were completed and transcribed they were carefully read by the said Jerome Kern and Sigmund Romberg, the witnesses aforesaid, and were corrected by them in each and every particular they desired, and they were then subscribed by the said witnesses;

I further swear that I am a shorthand reporter, and that said depositions were taken down by me in shorthand at the time and place hereinabove named, and were thereafter transcribed [fol. 1282] into typewriting under my supervision;

I hereby swear that the foregoing 41, comprise a full, true, correct and impartial transcript of my shorthand notes of said depositions.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office this 18th day of June, 1938.

(S.) William J. Stahly, Notary Public in and for the County of Los Angeles, State of California.

[fols. 1283-1284]

SR74 10- CH Lincoln Nebr 13 1145A

1938 Jun 13 AM 10 46.

L D Frohlich, care Philip Cohen, Suite 1217, 12222 Foreman Bldg., 707 South Hill St.

Nebraska Attorney General will not appear for depositions June fifteenth.

Barlow Nye Administrative Assistant Attorney General.

[fols. 1285-1294] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION

Whereas, notice was heretofore given for the taking of the depositions of Sigmund Romberg and others in the City of Los Angeles, State of California on behalf of the complainants in the above entitled case, and

Whereas, said notice stated that said depositions would be taken before Don Lake, and

Whereas, it has now so eventuated that said depositions cannot be taken before the said Don Lake,

Therefore it is stipulated, by and between the parties to the above entitled action that said depositions may be taken before William J. Stahly in place of taking the same before the above mentioned Don Lake. Notice and former

stipulations with reference to the taking of said depositions to be hereby changed in no other manner whatsoever.

Dated at Omaha, Nebraska, this 11th day of May, 1938.

L. J. TePoe, Attorney for Complainants. - Richard C. Hunter, Atty. Gen.; Barlow Nye (Adm. Asst. Atty. Gen.); Wm. J. Hotz, Sp. Asst. Atty. Gen., Attorney for Defendants.

[fol. 1295]. IN UNITED STATES DISTRICT COURT

Appellants' Condensed Statement of Exhibits

PLAINTIFFS' TRIAL EXHIBITS

Pl. Ex. 2 (O. R. 12) (R. V. II 2): Certified copy of Chapter 609, General Associations Law of the State of New York. (Section 12.)

Pl. Ex. 3 (O. R. 13) (R. V. II 2, 8): Articles of Association of ASCAP (Same as Exhibit "D", p. 8 hereof.)

Pl. Ex. 4 (O. R. 13) (R. V. II 2, 18): 1939 list of members of ASCAP, showing 123 publisher members and 1100 composers and author members; also showing branch offices and representatives by name and address in each state in the Union and foreign representatives in Japan, Hawaii, Argentina, Cuba and Puerto Rico. The Informative Notice: "The purpose of the within listing, which is issued periodically and sent to all licensees of ASCAP, is to enable all concerned to readily ascertain if the performing rights in a certain composition are embraced under the ASCAP license, and to give fair notice that as to the works copyrighted in the U. S. A. by our members, or the members of foreign affiliated societies listed on the front cover, non-dramatic public performances thereof for profit may not lawfully be presented except under license of this Society."

"The public performance for profit of a copyrighted musical composition, is illegal unless a license is held from the owner of the copyright. The person, firm or corporation operating any establishment where an infringing performance occurs, is the party liable under the Law. As to its members, and the members of foreign affiliated societies, ASCAP is the agency through which their non-dra-

matic public performance rights in the United States are licensed."

There are 20 foreign affiliated societies named and listed on the Exhibit.

Pl. Ex. 5 (O. R. 13) (R. V. II 2, 18): Same as Exhibit 4 excepting dated 11-29-37 with some changes and additions to the list of members.

Pl. Ex. 6 (O. R. 26) (R. V. II 3): Decree of Judge Wright of the Superior Court, State of Washington. Rejected by the Court.

Pl. Ex. 7 (O. R. 27) (R. V. II 3): Laws of Montana 1937, Chapter 90, pertaining to ASCAP. Rejected by the Court.

Pl. Ex. 8 (O. R. 27) (R. V. II 3): Laws of Montana 1939, Chapter 123, repealing Chapter 90 of the Laws of 1937, in re ASCAP. Rejected by the Court.

Pl. Ex. 9 (O. R. 27) (R. V. II 3): Florida Statutes similar to Nebraska, being No. 101, Chapter 17807, Florida Session Laws of 1937. Rejected by the Court.

[fol. 1296] Pl. Ex. 10 (O. R. 27) (R. V. II 3): Florida Statutes of 1939, No. 658, Chapter 19653, repealing parts of the Act of 1937. Rejected by the Court.

Pl. Ex. 11 (O. R. 27) (R. V. II 3): Laws of the State of Washington 1937, Chapter 218, relating to ASCAP. Rejected by the Court.

Pl. Ex. 12 (O. R. 27) (R. V. II 3): Laws of Tennessee, Senate Bill No. 1029, Chapter 212, Public Acts of 1937, re ASCAP. Rejected by the Court.

Pl. Ex. 13 (O. R. 28) (R. V. II 3): Withdrawn.

Pl. Ex. 14 (O. R. 28) (R. V. II 4, 13): Agreement between Gene Buck as a composer member and ASCAP, dated 6-25-35. (This Exhibit is Exhibit "C", p. 6 hereof.)

[fol. 1297] Pl. Ex. 19 (O. R. 44) (R. V. II 5): Was declines in shows, a sheet taken from the Motion Picture Herald, dated November 17, 1934, giving statistical information from 19-22-34. Rejected by the Court.

[fol. 1298] Pl. Ex. 23 (O. R. 107) (R. V. II 15): Letter from Federal Trade Commission to Sidney S. Cohen, President of the Motion Picture Theatre Owners of America, New York, dated 2-2-23, stating that the Federal Trade Commission could not aid the Motion Picture Theatre Owners of America in reference to their ASCAP contract. Rejected by the Court.

Pl. Ex. 24 (O. R. 114) (R. V. II 15): Map dated January 1, 1939, issued by the National Broadcasting Company, showing the network from Bangor, Maine; to Miami, Florida; New Orleans; Corpus Christi; Los Angeles; San Francisco; Seattle; and throughout all the principal cities of the United States; giving the station call numbers of Omaha and Lincoln, Nebraska. Rejected by the Court.

Pl. Ex. 25 (O. R. 114) (R. V. II 15): Same map of Mutual Broadcasting System. Rejected by the Court.

Pl. Ex. 26 (O. R. 114) (R. V. II 15): Same map of Columbia Broadcasting System. Rejected by the Court.

Pl. Ex. 27 (O. R. 117) (R. V. II 15): Compositions transmitted by National Broadcasting Company to station WOW at Omaha, Nebraska, over the network during the week of June 28, 1937, to July 4, 1937. This Exhibit shows the title of the piece that was played and the copyright owner. There were about 390 pieces listed on the schedule and the copyright owners were the publishing houses, being the publisher members of ASCAP in practically all instances. Rejected by the Court.

Pl. Ex. 28 (O. R. 120) (R. V. II 15): Page from the United States Department of Commerce, Census Bureau, radio broadcasting for 1935, showing the ten Nebraska radio stations received net revenue from the sale of time on the air \$510,000.00, which was 97% of their total revenue; that \$220,000.00 of the total was from local accounts, and \$290,000.00 national, regional, net work and spot accounts.

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Pl. Ex. 30 (O. R. 126) (R. V. II 15): Statement of basic statistics of radio and other commercial equipment in the [fols. 1299-1300] U. S., Department of Commerce, May 15, 1938, document No. 471, p. 15. Rejected by the Court.

Pl. Ex. 31 (O. R. 126) (R. V. II 15): Circular letter issued by ASCAP itself to its own representatives calling their attention to anti-ASCAP legislation, ordinances, etc., in Ala., Alaska, Ark., Colo., Conn., Del., Fla., Ga., Ill., Ind., Ia., Kan., La., Mich., Minn., Mo., Mont., Neb., N. M., N. Y., N. D., Ohio, Okla., Ore., Pa., Tenn., Tex., Vt., and Wash. Of the bills, Fla., Mont., Wash., Tenn., Neb., and Wis., became laws. The others were not enacted or are still pending. Exhibit was dated August 16, 1939. Rejected by the Court.

Pl. Ex. 34 (O. R. 133) (R. V. II 16): Sheet from magazine "Exhibitors Trade Review," Vol. 10, August 13, 1921, showing the list of music publishers who were then not members of ASCAP. Rejected by the Court.

Pl. Ex. 37 (O. R. 211) (R. V. II 23, 24): Alphabetical gummed sticker list of music publishing houses throughout the U. S., to be used in conjunction with compiling the card index system. Exhibit No. 32. Typical sticker: ABC Music Publishing Company, Inc., (ASCAP), 799 7th Avenue, New York, New York; AG Publishing Company, Haskill, Oklahoma. See Mills' Testimony.

[fol. 1301] Pl. Ex. 45 (O. R. 383) (R. V. II 48): Contract dated December 2, 1936, between NBC (red network) and WOW. The contract is entitled: "Network Affiliation and Program Service." The contract contains the following statement: "In order that your station may continue to serve the public interest, convenience and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, NBC will, at its own expense, extend its program transmission lines to your control board at your main studios and offer your station network programs of wide variety, including musical, educational, religious, sports, public affairs, international and special events programs."

"The network station rate for your station, on which its compensation will be figured as provided above, will be \$320.00 per full-evening hour. This rate will apply between 6:00 P. M. and 11:00 P. M. local time at your sta-

tion. Rates for other hours and for shorter periods will be as follows:" Then follows different rates for different hours of the day and Sundays differing from week days.

"You will submit to NBC daily in writing reports for all network programs broadcast by your station, upon forms provided by us for that purpose."

"You (WOW) agree to maintain for your station such licenses, including performing right licenses, as now are, [fol. 1302] or hereafter may be, necessary for your station to broadcast the programs which we furnish to you hereunder."

Pl. Ex. 46 (O. R. 393) (R. V. II 51 and 57): Is a report of the National Association of Broadcasters, dated August 18, 1937, and published for all radio stations. It contains a list of 5,500 compositions for use by Ahn & Simrock, Berlin, Germany, and other music publishing houses in Germany, Poland and New York. The Exhibit contains 177 pages containing an index to publishers where the compositions may be found and containing about 5,500 pieces of music owned and controlled by the Society of European Stage Authors and Composers, Inc., known as SESAC.

Pl. Ex. 47 (O. R. 421) (R. V. II 58): Is page 143 of Radio Advertising, September, 1939; gives the advertising rates of WOW; shows week-day rates 1 hour \$320.00, 5 minutes \$65.00, 25 words \$25.00, on chain breaks, these between programs, with lessor rates for hours other than from 6:00 P. M., to 11:00 P. M. The General Manager is shown as John J. Gillin, Jr. The station refuses to advertise for alcoholic beverages.

Pl. Ex. 48 (O. R. 430) (R. V. II 58): Is page 16 of the same magazine as Exhibit 47 and contains the advertising rates of the National Broadcasting Company, Inc., and shows the same rate as WOW charges for the same time and as shown by Exhibit 47.

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Pl. Ex. 50 (O. R. 443) (R. V. II 59): Advertisement of WOW: was withdrawn.

The foregoing Exhibits were introduced by the plaintiffs at the time of the trial, but do not include the plaintiffs' Exhibits attached to the 11 depositions taken by plaintiffs and offered in evidence. These are hereinafter set forth.

Also, plaintiffs' Exhibits attached to the interrogatories are hereinafter set forth.

DEFENDANTS' TRIAL EXHIBITS

The following Exhibits were introduced by the defendants:

Dft. Ex. 51 (O. R. 467) (R. V. II 63). The following is a letter from Eppley Hotels Company, dated May 31, 1939:

"Mr. John C. Wooden,
 "General Counsel for Iowa,
 "American Society of Composers,
 "Authors & Publishers,
 "601 Des Moines Bldg.,
 "Des Moines, Iowa.

"Re: Ruby Room, Chieftain Hotel.

"Dear Sir:

"In reply to your letter of May 19th, we wish to state [fols. 1303-1304] that it is not the intention of our hotel to violate the copyright laws of the United States. We do not own the musicians nor do we designate the music which they shall play. The choice of the music is up to the musicians whom we employ. However, we have instructed our musicians to play no music upon which there are copyrights, and it seems that under the circumstances, in order that there could be no liability against us, that you would consent to furnishing us with a list of the music upon which you claim to own the copyrights in order that we too might be protected as well as yourselves. That is asking very little. Certainly an organization that is in this line of business must have or should have at least a book or catalogue in which there is indexed specifically the pieces of music on which you claim to have copyrights.

"You can readily see how innocent we are in a matter where all or practically all the musicians play by ear. They seldom bring the sheet music on the premises. They might in one or two instances, but it is seldom done. Furthermore, most of the musicians have their own variations, and fre-

quently a substantial part of the music we are told is of their own creation.

"Consequently, if you are not willing to cooperate with us in the matter of furnishing us with a bona fide list of the music which you claim to own copyrights upon, then how can you expect us to desist from having played on our premises your music?

"We use very little musical talent on the premises, and most assuredly we will not sanction or tolerate any violation of the copyright law and have no intention of injuring you in any legal rights that you may have in any way. We only ask for your complete cooperation to avoid damages to anyone."

"Yours very truly,

"Eppley Hotels Company

"EH/av

"E. M. Hedlin, Comptroller."

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[fol. 1305] Dft. Ex. 55 (O. R. 490) (R. V. II 67): Consists of the following telegrams:

"LD2069CC950 2/162-

1935 Dec 30 PM 8 34

Performing rights of which are exclusively claimed by others stop to illustrate published reports that the Society can no longer license small performing rights in the works of George M Cohan Victor Herbert and some others are absolutely without foundation stop the Society has the right to grant licenses in respect of these works and will protect all its licensees broadcasting the same stop while we of course have no objection to your taking any other licenses which you may desire to take we feel it only fair to tell you that your fee to the Society will not be reduced and the formula will not be altered except that the license will be limited to works in Societys repertory as of January first Nineteen Thirty six and furthermore to advise you that with respect to any composition the licensing rights of which are exclusively vested in us we will not recognize any license which you may obtain from others—

"American Society of Composers Authors and Publishers by Gene Buck President."

"LD2069CC950 303 DL 2 Extra 1/141—New York NY 30
635P

1935 Dec 30 PM 8 34

Radio Station WOW Woodmen of the World Life Ins Assn. DLR Soon as Possible .Omaha Nebr—This Is to Notify You That the American Society of Composers Authors and Publishers Is Prepared to Extend Your Present License Agreement With it upon the Same Terms and Con- [fol. 1306] ditions for Five Additional Years from January First Nineteen Thirty Six Except That the Rights Granted by the Society Shall be Limited to Compositions of the Membership as Constituted on January First Nineteen Thirty Six Stop The Society Challenges the Claims Made by Others to Ownership in the Small Performing Rights of Various Compositions Published by Them But Written and Composed by Members of the Society Stop The Society Controls the Performing Rights of Many of Such Compositions and Within a Very Short Time Will Publish a List Thereof Stop As Our Examination of Individual Contracts Progresses we Are Confident That Our Repertory Will be Increased in Respect of Many Compositions the——"

"OM4 131 NL-RN New York NY Jan 10 1936 Jan 11 AM 8 52
Radio Station WOW, Woodmen of the World Life Assurance Assn——

"On Dec 30th 1935 the ASCAP Offered to Extend Your Present License Agreement upon the Same Terms and Conditions for *Five Additional Years from Jan 1 1936* Except That the Rights Granted by the Society to You Shall be Limited to Compositions of the Membership as Constituted on Jan 1 1936 to This Wire the Society Has Received no Answer and Unless we Hear from You by Jan 15th That You Accept Such Offer the Society Will Deem You to be an Infringer in Respect of the Performances and Broadcasting of Any of its Works and You Shall be Held to Strict Accountability on Account of All Performances of its Works Beginning Jan 1 1936——

"American Society of Composers Authors and Publishers."

"Straight Message

Omaha, Nebraska

January 15, 1936

"Gene Buck, President

American Society of Composers, Authors and Publishers
30 Rockefeller Plaza
New York City, N. Y.

In Accordance With Your Telegram January Tenth we
Ask That Present Contract be Continued.

"Radio Station WOW, Woodmen of the World, by
WM Ruess, Personnel Director.

"WR:cb

"Chg WOW

"CC/Bookkeeping Dept

"4:05 PM"

Dft. Ex. 56 (O. R. 492) (R. V. II 67): Certificate of the Clerk of the United States District Court for the District of Nebraska and the various deputies in the different divisions in the State, showing the number of cases entitled, Gene Buck, as President of ASCAP, et al., v. different defendants in the State of Nebraska for infringement. The Exhibit shows 1 suit was instituted in 1925; 9 in 1926; 7 in 1927; 7 in 1928; 11 in 1929; 11 in 1930; 2 in 1931; 3 in 1932; 9 in 1933; 11 in 1934; 10 in 1935; 11 in 1936; 1 in 1937; 3 in 1938; 1 in 1939 pending. These suits were all settled for [fol. 1307] the disputed license fee and a new license or, in a few instances, the defendants went out of business. In all of the cases, Gene Buck was President suing for ASCAP or Irving Berlin, Inc. or J. H. Remick & Co., or Leo Feist, Inc. All other publisher members of ASCAP were the plaintiffs with Buck and ASCAP. The total number of infringement suits brought at different points throughout the State of Nebraska during this period aggregated approximately 100.

Dft. Ex. 57 (O.R. 493) (R.V. II 67): Printed counter-showing made by the defendants consisting of affidavits taken throughout the State of Nebraska from users of music and used in resisting the application for the temporary injunction and to support the defendants' motion to dismiss. This was rejected by the Court and as no appeal was prosecuted from the order granting the temporary injunction, the same is not included in this record.

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[fol. 1308] Dft. Ex. 65 (O.R. 503) (R.V. II 68): Number of radios in Nebraska homes. "Figures prepared by joint committee on radio research of AAAA and reported in broadcasting magazine 1939 year book gave 352,000 homes in Nebraska. Radio homes 284,100 out of 352,000 in Nebraska. Latter figure indicates at least one radio in home. No data on additional radios in home or car radios. Howard O. Peterson WOW."

[fol. 1309] PLAINTIFFS' DEPOSITION EXHIBITS

The following exhibits were introduced by the plaintiff and attached to the depositions of Sigmund Spaeth, Abraham Schwartz, Walter S. Fischer, Irving Caesar, Edwin H. Morris, Ella Herbert Bartlett, Will Von Tilzer, Edgar Leslie and George W. Meyer. These depositions were taken in New York on 5-23, 24 and 25, 1938. Also, the depositions of Jerome Kern and Sigmund Romberg were taken in Los Angeles on June 14, 1938, with exhibits attached. (O. Dep. R. Pages 1 to 560) (R.V. II 69 to 124).

Pl. Dep. Ex. 1 p. 29 (Spaeth), R. Vol. II, p. 70: Agreement between Sigmund Spaeth and ASCAP dated 6-28-35, automatically renewable after December 31, 1940, is the same as Ex. "C." p. 6 of this volume.

Pl. Dep. Ex. 2 p. 91 (Schwartz), R. Vol. II, p. 75: Agreement between Irving Berlin, Inc., and ASCAP dated 12-19-35, automatically renewable after December 31, 1940, is the same as Ex. B, p. 3 of this volume.

Pl. Dep. Ex. 3 p. 93 (Schwartz), R. Vol. II, p. 75: Standard uniform popular songwriter's contract between Irving Berlin, Inc., and three song writers, dated September 27, 1934, and contains the following pertinent paragraphs:

"Witnesseth:

"1. The Writer (s) hereby sells, assigns, transfers and delivers to the Publisher, its successors and assigns, a certain heretofore unpublished original musical composition, written and/or composed by the above named Writer(s) now entitled

"The Object Of My Affection

"including the title, words and music thereof, and the right to secure copyright therein throughout the entire

world, and so have and so hold the said copyright and all rights of whatsoever nature thereunder existing.

"2. In all respects this contract shall be subject to any existing agreements between all of the parties hereto and the American Society of Composers, Authors and Publishers.

"3. The Writer(s) hereby warrants that the said composition is his sole, exclusive and original work, and that he has full right and power to make the within agreement, and that there exists no adverse claim to or in the said composition, except as aforesaid in Clause 2 hereof.

"4. In consideration of this agreement, the Publisher agrees to pay the Writer(s) as follows:

"(a) An advance of \$1.00 in hand paid, receipt of which is hereby acknowledged, which sum shall be deductible from any payments hereafter becoming due the Writer(s) under this agreement.

"(b) In respect of regular piano copies sold and paid for at wholesale in the United States of America, royalties 3 cents per copy.

[fol. 1310] "(c) A royalty of $33\frac{1}{3}\%$ of all net sums received by the Publisher in respect of regular piano copies and/or orchestrations hereof sold and paid for in any foreign country.

"(d) A royalty of two cents per copy of orchestrations thereof in any form sold and paid for in the United States of America.

"(e) The sum of \$1.00 as and when the said composition is published in any folio or composite work in the United States of America, and \$1.00 when and if published in such form in any foreign country, regardless of the number of copies published, provided however, that the said composition shall in no case be published in such form until four months after publication thereof in regular piano copies.

"(f) Folios and/or composite works as referred to in the next preceding paragraph shall be deemed to include any publication of a collection of at least ten or more works contained within the same volume and/or binding.

"(g) For purposes of royalty statements, if a composition is printed and published in the United States of America, as to copies and rights sold in the Dominion of Canada, revenue herefrom shall be considered as of domestic origin. If however, the composition is printed by a party

other than the Publisher in the Dominion of Canada, revenue from sales of copies and rights in Canada shall be considered as originated in a foreign country.

"(h) As to 'professional material'—not sold or resold, no royalty shall be payable.

"(i) An amount equal to 33-1/3% of all receipts of the Publisher in respect of any licenses issued authorizing the manufacture of the parts of instruments serving to mechanically reproduce the said composition, or to use the said composition in synchronization with sound motion pictures, or to reproduce it upon so-called 'electrical transcriptions' for broadcasting purposes; and of any and all receipts of the Publisher from any other source or right now known or which may hereafter come into existence.

"5. It is understood and agreed by and between all of the parties hereto that all sums hereunder payable jointly to the Writer(s) shall be divided amongst them respectively as follows:

"Name:	"Share:
"Truman Tomlin	"One-third
"Coy Poe	"One-third
"Jimmy Grier	"One-third"

[fol. 1311] Pl. Dep. Ex. 4, p. 124 (Schwartz), R. Vol. II, p. 78: Agreement between Irving Berlin, Inc. and RKO Radio Pictures, Inc., dated September 1, 1933. The contract covers the right of RKO to use certain musical compositions of Irving Berlin, Inc. in connection with synchronized motion pictures and, in turn, Irving Berlin, Inc. acquires the copyrights of musical compositions written for and used in connection with such synchronized motion pictures of RKO. The price that Irving Berlin, Inc. as the publisher pays to the RKO is as follows: Royalties on all music furnished by RKO to the publisher, if published by the publisher: 6 cents a copy for each regular pianoforte copy of production music, 3 cents a copy for popular music appearing in a picture for which a special musical score has been written, 50 per cent of the amount shown on the statement submitted to the publisher from foreign publishers, 50 per cent of all gross sums received by the publisher for mechanical rights in production, and 33 1/3 per cent of all gross sums received for mechanical rights in popular music.

"50 per cent of all gross sums received by the publisher for performing rights in foreign countries, or for any other rights of any kind or nature in and to such music throughout the world, except moneys received by the publisher from the American Society of Composers, Authors and Publishers" (ASCAP).

The RKO pays the royalties to the writers or composers of all the above mentioned music.

"Nothing in this agreement contained shall in any way be deemed as conveying to the corporation" (RKO) "Any small performing rights anywhere in the world as defined by the American Society of Composers, Authors and Publishers with respect to any of the compositions affected hereby."

Pl. Dep. Ex. 5 and 5A, p. 127 (Schwartz), R. Vol. II, p. 78: These are extensive printed catalogs of the copyrighted musical works of Irving Berlin, Inc. of New York. The catalogs state "For license to publicly perform for profit, apply to ASCAP." These catalogs contain approximately ten thousand pieces of music, the copyrights of which are all owned by Irving Berlin, Inc., and the public performance rights are all vested in ASCAP.

Pl. Dep. Ex. 6, p. 175 (Fischer), R. Vol. II, p. 83: Agreement between Carl Fischer, Inc. and ASCAP dated 4-12-35. This agreement is identical in form with Exhibit "B" on p. 3 of this volume.

Pl. Dep. Ex. 7A to 7M, p. 175 (Fischer), R. Vol. II, p. 83: Contains thirteen printed catalogs of music that is for sale for all purposes by Carl Fischer, Inc., one of the appellees, and upon which the public performance rights are vested in ASCAP by virtue of their contract, Ex. 6 above, with ASCAP.

Pl. Dep. Ex. 8, p. 179 (Fischer), R. Vol. II, p. 83: A typical contract between a composer, Richard Hageman, and Carl Fischer, Inc., a publisher member, dated November 17, 1936. This contract is the same as Ex. "C" on p. 6 hereof.

Pl. Dep. Ex. 9A, p. 181 (Fischer), R. Vol. II, p. 83: This exhibit, dated December 7, 1935, is between George Hamilton Green, a composer, and Carl Fischer, Inc., a publisher member, and one of the appellees herein. It is the same in

form as the previous exhibit and is set forth in full as Exhibit "C" in Vol. III, p. 6, hereof.

[fol. 1312] Pl. Dep. Ex. 9B, p. 181 (Fischer), R. Vol. II, p. 83: This is an authenticated copy of a typical assignment of a copyright from a composer to Carl Fischer, Inc., of eight popular tunes, vesting in the publisher for \$1.00 and other valuable consideration all rights in the copyrights of the composer.

Pl. Dep. Ex. 10A, p. 184 (Fischer), R. Vol. II, p. 84: This exhibit is a typical agreement, dated September 5, 1930, between Jascha Heifetz and Carl Fischer, Inc., giving to the publisher the exclusive rights to the productions therein mentioned. The exhibit is the same as Ex. 8 and Ex. 9A hereinbefore, and is the same in terms as Ex. "C" on page 6 hereof.

Pl. Dep. Ex. 10B, p. 184 (Fischer), R. Vol. II, p. 84: This is a memorandum of an agreement dated the 16th day of May, 1933, between Union Mucicale Espanola of Spain and Carl Fischer, Inc., wherein Carl Fischer, Inc., grants to the Spanish company the sole and exclusive license to publish and sell throughout Europe copies of the musical work entitled, "Sevilla," this being a transcription by Jascha Heifetz for violin and piano. Fischer, Inc., receives 50 per cent of all royalties received in foreign countries on the production.

Pl. Dep. Ex. 11A, p. 185 (Fischer), R. Vol. II, p. 84: Authenticated copy of the assignment of the Southern Music Company, Inc., to Robert MacGimsey of all their interest in "Shadrach" dated January 23, 1937.

Pl. Dep. Ex. 11B, p. 186 (Fischer), R. Vol. II, p. 84: This is a contract for the royalty payments to Robert MacGimsey for "Shadrach" which gives to him 50 per cent of all of the mechanical royalties from recordings, $33\frac{1}{3}$ per cent of all other mechanical royalties, and 3¢ per copy of all sheet music, and $33\frac{1}{3}$ per cent of all miscellaneous royalties.

Pl. Dep. Ex. 12, p. 191 (Fischer), R. Vol. II, p. 84: Agreement between RCA Mfg. Co. and Carl Fischer, Inc., dated May 6, 1938, covering "Two Guitars". The agreement contains the following clause:

"This agreement is entered into with the understanding and agreement that nothing herein contained shall be deemed to free the talking machine record manufactured pursuant to this license from further contribution to the copyright in the event of its being used for public performance for profit."

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Pl. Dep. Ex. 14, p. 248, (Caesar), R. Vol. II, p. 90: Agreement between Irving Caesar and ASCAP, dated July 18, 1935, granting to ASCAP all the public performance rights to the Irving Caesar compositions. This agreement is identical in form with Exhibit No. "B" on page 3 of this volume.

Pl. Dep. Ex. 15, p. 296 (Morris), R. Vol. II, p. 94: A contract between Harms, Inc., as publisher, dated February 21, 1927, and Lew Fields, and Vincent Youmans as composers. It gives to the composer 2 cents a copy on each piece of sheet [fol. 1313] music sold from the musical production "Hit the Deck."

Pl. Dep. Ex. 16, p. 296 (Morris), R. Vol. II, p. 94: An agreement dated the 8th day of February, 1923, between George Gershwin as the composer, and Harms, Inc., as the publisher, giving to the publisher throughout the civilized world all rights of all compositions written by Gershwin, and pay him therefore 10 cents per copy for piano selections, and 15 cents per copy for theatrical representations, and 50 per cent of the American royalty rate for regular pianoforte copies sold in countries outside of the United States and Canada, and 25 per cent of the royalties received from mechanical reproduction.

Pl. Dep. Ex. 17, p. 296 (Morris), R. Vol. II, p. 94: An agreement made January 21, 1933, between Cole Porter, a composer, and Harms, Inc., giving to the publisher the same rights and privileges and royalties set forth in the previous exhibit No. 16.

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[fol. 1314] Pl. Dep. Ex. 21 A, B, C, D and E (Bartlett), R. Vol. II, p. 100: These five exhibits are dated 1898, 1905, 1906, 1903, and 1919, respectively, between Victor Herbert and M. Witmark & Sons, wherein, with the exception of the last exhibit which is between Victor Herbert and T. B.

Harms & Francis, Day & Hunter, all New York corporations, publishers' rights are arranged for in taking over the copyrights on the "Fortune Teller", "Mlle. Modiste," "The Red Mill", "Babes in the Woods", and "Little Miss Wise" (to be changed), and granting to Victor Herbert 12¢ upon each and every copy of the piano and vocal score, and an amount equal to 10 per cent of the retail price of any separate number or song or any combination of two or more numbers or songs when printed together with the words thereof; an amount equal to 15 per cent of the retail price thereof on each and every copy of any arrangement or selection of the whole or any part of the music of said comic opera for piano or any solo instrument with or without accompaniment; the sum of \$150.00 in full satisfaction for royalties upon all band or orchestral parts of the music of said comic opera, or any arrangements of the whole or of any part of the music, thereof, exclusive of pieces given for advertisement. A restriction exists against the music dealer selling not to exceed 1500 copies under any circumstances; also, the contracts do not cover the dramatic composition or presentation upon stage, theatre, or elsewhere. All of said contracts are similar excepting that they vary slightly in the amounts to be paid to the composer.

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[fol. 1315] Def. Dep. Ex. 1, p. 450 (Von Tilzer) R. Vol. II, p. 109: William Von Tilzer, president of Broadway Music Corporation, presented a statement of the total number of songs published by the Broadway Music Corporation in 1934, being 115,941; in 1935, 101,568; and in 1936, 36,183; and in 1937, 3,863. These songs so published were for sheet music sales. The highest number of sales was "Be Still, My Heart", 68,122 copies sold in 1934.

Pl. Dep. Ex. 28, p. 417 (Von Tilzer), R. Vol. II, p. 105: A typical contract between a composer, Charles McCarron, and Broadway Music Corp., dated January 15, 1917. It gives to the composer in exchange for the assignment of the copyright on composition, "When The Sun Goes Down In Dixie and the Moon Begins to Rise", $\frac{2}{3}$ of a cent upon each and every printed pianoforte copy sold in the United States and Canada, and $\frac{1}{4}$ of all sums received by the assignee for mechanical reproductions of the same.

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Pl. Dep. Ex. 31, p. 530 (Kern), R. Vol. II, p. 118: Kern contract with ASCAP, the same as the Buck contract, Exhibit "C", R. Vol. III 6.

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Pl. Dep. Ex. 33, p. 553 (Romberg), R. Vol. III, p. 123: Contract between Romberg and ASCAP, the same as the Buck contract Exhibit "C". R. V. III 6.

(Signed) William J. Hotz, Attorney for Appellants,
1530-5 City Nat'l. Omaha.

Clerk's Certificate to foregoing paper omitted in printing.

STATEMENT RE PLAINTIFFS' EXHIBIT 1

This exhibit contains a list of more than 190 copyrighted compositions, of which the lyrics or words were written by Gene Buck. Such compositions were copyrighted at various dates between 1912 and 1931. Most of them were used in the Ziegfeld Follies of various years. Specimen compositions giving the collaborator, the publisher, the date of copyright and the show, if any, in which they appeared, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Show
Chu Chin Chow	Dave Stamper	Harms, Inc.	6/6/17	Ziegfeld Follies of 1917
Daddy Has a Sweetheart and Mother Is Her Name	Dave Stamper	Wm. H. Penn, Gene Buck & Dave Stamper (Marks Music)	10/7/12	
Florida, The Moon and You	Rudolf Friml	Harms, Inc.	6/30/26	Ziegfeld's Palm Beach Girl
Garden Of My Dreams	Dave Stamper & Louis A. Hirsch	Harms, Inc.	6/21/18	Ziegfeld Follies of 1918
Hello Frisco	Louis A. Hirsch	M. Witmark & Sons	6/21/15	Ziegfeld Follies of 1915
In Khorassan	Victor Herbert	Harms, Inc.	6/27/31	Ziegfeld Follies of 1921
Just Because You're You	Jerome Kern	T. B. Harms, Inc.	6/25/17	Ziegfeld Follies of 1917
Legend Of The Golden Tree	Victor Herbert	Harms, Inc.	6/27/21	Ziegfeld Follies of 1921
Love Boat	Victor Herbert	Harms, Inc.	6/26/20	Ziegfeld Follies of 1920
Maid of Gold	Rudolf Friml	Harms, Inc.	12/4/23	Ziegfeld Follies of 1923
My Man	James Hanley	Harms, Inc.	3/31/20	Girls of 1920
'Neath The South Sea Moon	Dave Stamper & Louis A. Hirsch	Harms, Inc.	6/20/22	Ziegfeld Follies of 1922
No Foolin'	James F. Hanley	Harms, Inc.	2/3/26	Palm Beach Nights
Princess Of My Dreams	Victor Herbert	Harms, Inc.	6/27/21	Ziegfeld Follies of 1921
Rose Of My Heart	Albert Sernay	Harms, Inc.	7/3/24	Ziegfeld Follies of 1924
Settle Down In A Little Town	Werner Janssen	Harms, Inc.	3/28/25	Ziegfeld Follies of 1924-25
Tulip Time	Dave Stamper	Harms, Inc.	6/21/19	Ziegfeld Follies of 1919
Underneath The Japanese Moon	Gus W. Haenschen	Harms, Inc.	7/16/14	Ziegfeld Follies of 1914
When The Lights Are Low	Jerome Kern	Harms, Inc.	6/21/16	Ziegfeld Follies of 1916
[Vol. 1317]				
Where Is My Wandering Boy Tonight	Dave Stamper	Shapiro, Bernstein & Co.	2/11/14	
Can't You Hear Your Country Calling	Victor Herbert	T. B. Harms & F. D. & H.	6/12/17	Ziegfeld Follies of 1917

England.

**Agreement Between the Performing Right Society Limited
and American Society of Composers, Authors and Pub-
lishers**

January 6th, 1933

[fol. 1319] Agreement made the sixth day of January,
April 1933, between

The Performing Right Society Limited, of Chatham House, 13 George Street, London, England, hereinafter designated as "PRS", and

American Society of Composers, Authors and Publishers, of 1501 Broadway, New York, N. Y., United States of America, hereinafter designated as "ASCAP", as follows:

I

PRS hereby grants to ASCAP the exclusive right to license in the United States of America, Alaska, Porto Rico, Philippine Islands, Virgin Islands, Hawaii, and its Colonies and Possessions, the non-dramatic public performance for profit, of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by PRS. Symphonic and similar concert works are, however, expressly excluded, and it is understood that PRS or its members concerned are at liberty to collect independently fees for the performance of such works in the beforementioned territory.

[fol. 1320]

II

ASCAP hereby grants to PRS the exclusive right to license in Great Britain, Northern Ireland, self-governing British Dominions (exclusive of Canada, Newfoundland, Australia and New Zealand) and Colonies, Dependencies, Protectorates and mandated territories, the non-dramatic public performances of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by ASCAP.

III

The terms "public performance for profit" and "public performance" hereinbefore used, shall be construed to mean vocal, instrumental and/or mechanical performances and

representations in any manner or by any method whatsoever, including performance by radio broadcasting stations, by telephony and/or "Wired Wireless"; and/or reproductions of non-dramatic performances by means of devices for reproducing sound recorded in synchronization or timed relation with motion pictures, provided however, that in the case of dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, such performances shall be limited to the separate numbers, fragments or arrangements, melodies or selections forming a part or parts thereof, and shall not include [fol. 1321] the right of public performance of such works in their entirety or of any part thereof as stage plays, or as a part of stage plays, all of which rights, including all other rights not in this agreement expressly enumerated, are hereby reserved and retained to their members by ASCAP and PRS respectively, and by the respective composers, authors and publishers of such musical works.

IV

Each of the parties hereto agrees to require of and collect from its licensees, for the public performance of the musical works referred to in Clauses I and II hereof, payment therefor upon the same basis and in the same manner as is now in force and effect between each Society and its respective licensees with respect to the musical works referred to in Clauses I and II hereof, and that each Society will account for and pay over to the other such monies in respect of the public performance of such musical works as is hereinafter provided.

V

Each of the parties hereto shall account to the other for each calendar year during the term hereof on or before each 30th September succeeding the close thereof.

[fol. 1322]

VI

A. The net sum allocable by PRS in respect of the musical works referred to in Clause II hereof shall be ascertained in accordance with the present practice of PRS or any modification thereof which may be made from time to time, and shall be divided and paid in the following manner:

B. One-half of the sum in respect of each work shall be the share of the writers thereof, (composers and authors).

Such share shall be divided between the writers, and the shares of such writers as are members of ASCAP shall be paid by PRS to ASCAP in accordance with the present practice of PRS. The remaining half of the sum in respect of each work shall be the share of the publisher thereof and shall be paid to the publisher member of PRS who represents in Great Britain the American publisher of the work. In the case of ASCAP publisher-members who are not so represented the share shall be paid to ASCAP for credit of such ASCAP publishers. The payments by PRS under this agreement shall be accompanied by a list of the works performed according to the returns received from PRS licensees, showing the amount allocated in respect of each work, and shall be subject to deduction therefrom of such [fol. 1323] amount as may be assessed against them on account of taxes payable to the Government.

VII

A. ASCAP agrees during the term hereof to use its best endeavors to gather daily data covering completely the musical programs as rendered by the two principal broadcasting networks in the U. S. A. (National Broadcasting Company and Columbia Broadcasting System respectively, or their successors), together with similar data regarding the musical programs rendered by a selected number of independent broadcasting stations not affiliated with either of said networks but located in various sections throughout the entire country.

B. From such program data, as rendered by the said networks and stations, ASCAP undertakes to prepare annually and furnish to PRS a summary which shall show the total number of broadcast performances of works identifiable in such programs as from the entire repertoire of PRS.

C. Identifiable copyrighted works listed on the programs gathered in accordance with paragraph A hereof shall be given one point credit for each performance. Points in respect of works (other than those referred to in sub-paragraph E hereof) shall be credited to the respective ac-[fol. 1324] counts of:

1. The repertoire of ASCAP.
2. The repertoire of each foreign performing right Society with which ASCAP may have reciprocal relations, or act for it as agent.

3. The repertoire of each foreign country with which ASCAP may have no relationship.

4. Works not identifiable with any of the above mentioned repertoires.

5. Works of United States origin copyrights of which are owned by non-members of ASCAP.

Points in respect of works referred to in Paragraph E hereof shall be divided equally between the repertoires of ASCAP and PRS.

D. From the total number of points so credited under headings one (1.) and two (2.) above there shall be computed the proportion thereof contributed by the repertoire of PRS, and the amount due to PRS from ASCAP each year during the term hereof shall be exactly in proportion as the number of its points in relation to the total number of points credited under headings one (1.) and two (2.) above bears to the distributable net revenue of ASCAP during the same period.

E. Where a member of PRS has assigned the United States copyright in a work to a publisher member of ASCAP without any reservation of an interest in performing rights no credit shall be entered to the account of the publisher member of PRS in respect of performances thereof but in [fol. 1325] such case and under all circumstances the share of one half for writer members of PRS (composers, authors and arrangers) in respect of such works, when identifiable, shall be paid to PRS for credit of such writer members. If however the assignment of copyright is subject to the reservation by the member of PRS of any interest in the performing rights in the work, in such event ASCAP shall credit performances thereof to the PRS repertoire exclusively and PRS shall after making its final analysis of the summary and data to be furnished by ASCAP under subparagraphs A and B hereof, remit to ASCAP for the account of its publisher member such share in the fees credited to each such work as shall be due to him, accompanied by a detailed statement of all such items.

F. PRS undertakes within sixty days from the execution of this agreement to furnish to ASCAP a complete list, and subsequently during the term hereof to make thereto such additions as may be from time to time necessary, showing

the title, name of composer and/or author and publisher of each work the United States copyright of which has been by a member of PRS assigned to a member of ASCAP subject to the reservation of an interest in the performing rights in the work.

[fol. 1326] G. If at any time during the term of this agreement ASCAP shall be unable to secure such daily data as is described in Paragraph A hereof, it shall promptly notify PRS to that effect whereupon at its option PRS may terminate this agreement at the termination of the then current year, and at its option for such year shall be paid either in accordance with the formula provided in sub-paragraphs C and D hereof to the extent that such data has been obtained, or the sum of \$25,000.00 in full settlement.

H. On or before the 30th day of September following the close of each year of the term hereof ASCAP shall furnish to PRS the statements provided for in sub-paragraph B hereof, accompanied by remittance of such amount as shall under the formula (provided in sub-paragraphs C and D hereof) be shown as due to PRS after deducting therefrom only such amount as may be assessed against it on account of taxes payable to the Federal, State or Municipal Government.

I. Supplemental to and in support of the data prepared in accordance with sub-paragraphs A, B and C hereof, and the statements in accordance with sub-paragraph H to be furnished by ASCAP to PRS, there shall also be despatched at the same time all the original programs from which the [fol. 1327] data contained in the statements was compiled. PRS shall be entitled to retain possession of such original programs for a period of not less than sixty days from the receipt thereof, and upon request of ASCAP shall then forward the same complete as received, carrying charges prepaid, as may be directed by ASCAP.

J. Inasmuch as ASCAP will receive such original programs in strict confidence from the sources, and will covenant that no disclosure of the contents thereof shall be made to any copyright owner whose works are not embraced under the licenses issued by ASCAP, it is of the essence of this agreement, and PRS agrees, that it will not divulge or expose the contents of such original programs to any but its members and then permit only a personal inspection,

and that under no circumstances will it permit any copies thereof or of any of the particulars thereof to be made and removed from its files and premises.

VIII

Each of the parties hereto grants to the other the rights and licenses set forth in Clauses I and II hereof, subject always, however, to any right of the author, composer or publisher of any musical work to remove any musical work from the repertory of such respective party and/or to revoke, modify or limit any performing right which he or [fol. 1328] it may have granted to such party, to the extent to which any such composer, author or publisher may have the right so to do, and in the event of any such removal, revocation, modification or limitation each of the parties hereto shall give to the other immediate notice thereof.

IX

This contract is declared to be personal with respect to each of the parties hereto and neither party shall assign the same or any rights therein granted or arising therefrom, without the written consent of the other party first had and obtained, except insofar as each party shall have the right to issue licenses for the giving of public performances of the musical works contained in the repertoire of the other party. Nor shall this contract be deemed to be assignable by operation of law, devolution or legal proceedings.

X

Each of the parties hereto hereby irrevocably during the term of this contract authorizes, empowers and vests in the other party the right, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work coming within the purview of this agreement to institute and prosecute [fol. 1329] actions to retain and recover damages for the infringement or violation of the rights granted to the grantee under this contract, and to release, compromise or refer to arbitration, in the grantee's discretion, any and all actions in the same manner and to the same extent and to all intents and purposes as the grantor and/or the owners of the copyright of such musical work might or could do. And each of the parties hereto hereby makes,

constitutes and appoints the other party its true and lawful attorney irrevocably during the term of this agreement, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work to do all acts, take all proceedings and execute, acknowledge and deliver any and all instruments and documents that may be necessary, proper or expedient and recover damages, under the copyright of such musical works or otherwise, for the infringement or other violation of the rights hereby granted in such works, and to release, compromise and refer to arbitration any such proceedings or actions or to make any other dispositions of differences in relation to the premises.

[fol. 1330]

XI

Each party hereto shall supply the other as far as possible with any particulars relating to the musical works in their respective repertoires which may be necessary in their mutual interests.

XII

Each of the parties hereto agrees, during the term hereof, to execute, acknowledge and deliver to the other party such assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient by such party to enable it to exercise and enforce in its own name, or otherwise, all the rights, remedies and privileges granted to it under this contract.

XIII

Each of the parties hereto agrees that it will not accept into membership any composer, author or publisher, who is a member of the other Society at the time when this agreement is made or who shall become a member of the other Society during the term hereof, and who has granted as to ASCAP his rights also for the territory named in Clause II hereof, and as to PRS the territory named in Clause I hereof, unless the other Society shall consent thereto in writing. That it will not represent in any manner, during [fol. 1331] the term hereof, any other organization or Society resident in the said territories respectively having purposes or objects similar to those of either of the parties hereto.

XIV

Each of the parties hereto shall have the right to appoint in writing a representative, to take up in its behalf and examine into, during customary business hours, any matter arising in respect of the relations covered by this agreement.

XV

This agreement shall be effective as of the 1st January, 1933, and shall continue indefinitely thereafter subject to the right of either party by written notice served upon the other before 30th September of any year to terminate the agreement as at the end of the then current year. In the event of any such termination by either party hereto, the parties shall account each to the other in full and according to the terms hereof covering all operations for that year.

[fol. 1332] In Witness Whereof the parties hereto have caused these presents to be signed by their respective duly authorized officers and their respective seals hereunto affixed the day and year first above written.

American Society of Composers, Authors and Publishers, by Gene Buck, President.

Attest: Joseph Young, Secretary. The Performing Right Society Limited, by Louis A. Boosey, John Abbott, Directors, by [Signature Illegible], Secretary. (Seal.)

(Here follow 3 photolithographs, side folios 1333-1335)

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AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

THIRTY ROCKEFELLER PLAZA
NEW YORK CITYHuse Publishing Company
Radio Station W.J.A.G.
Norfolk, Nebraska

Gentlemen:

January 20, 1936

It is mutually agreed that the certain license agreement between us, dated October 8, 1932, effective October 1, 1932, is hereby extended on the same terms and conditions as therein contained, from the date of its present expiration, up to and including December 31, 1940; except that Article 7 of such license is hereby amended so as to read:

"7. In case there shall be a substantial diminution in the quantity of musical numbers, the performing rights of which are licensed under this agreement, then the Licensee shall have the right to terminate this license upon three days' notice by registered mail, addressed to the Society, and this right shall be the sole and exclusive remedy.

The Society reserves the right, at any time, and from time to time, to withdraw from the operation of this license, any musical number or numbers. Upon any such withdrawal the Licensee may immediately terminate this license by giving written notice of its election so to do to the Society.

In the event of any such termination of this License, pursuant to Articles 5 and/or 7 hereof, the Society shall refund to the Licensee pro rata license fees, if any, paid for a period beyond the date of such termination."

ACCEPTED:

HUSE PUBLISHING COMPANY

By

Title

Dated

1333

Very truly yours,
AMERICAN SOCIETY OF COMPOSERS
AUTHORS AND PUBLISHERSBy *Norman Brumby*

814A

MEMORANDUM OF AGREEMENT between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, (hereinafter styled "SOCIETY"), and

HUSE PUBLISHING COMPANY

(hereinafter styled "LICENSEE"), conducting a radio broadcasting station 51% or more owned and operated by a daily newspaper, as follows:

1. SOCIETY grants to LICENSEE, and LICENSEE accepts for a period of three (3) years from October 1, 1932, a license to publicly perform by broadcasting from Radio Station W. J. A. G.

located at Norfolk, Nebraska

non-dramatic renditions of the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights.

2. The within license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part.

3. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions coming within the purview of this within license performed pursuant hereto, or as authorizing any receiver of any such broadcast rendition to publicly perform or reproduce the same for profit by any means, method or process whatsoever.

4. The within license is limited to the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license the performing rights heretofore granted, in programs rendered at or from said radio station, or at or from any other place duly licensed by SOCIETY to perform such works (unless the performance originates at a place or from a source which SOCIETY does not customarily license), from which place rendition of such works is transmitted to said radio station for the purpose of being broadcast from there.

It is understood, however, that LICENSEE shall be guilty of a breach under this Article (No. 4) only in the event that it continues to broadcast a program rendered at such places other than the said station after LICENSEE shall have received notice from SOCIETY that such other places are not licensed by SOCIETY to perform.

5. The within license is granted upon the express condition:

(a) That should the power input as at present authorized by the Federal Radio Commission for the said station (1,000 watts) be changed during the term hereof, the basic fee as provided in the first paragraph of Article No. 8 hereof shall be adjusted.

(b) That in event the license of said station from the Federal Radio Commission is terminated, cancelled, revoked or suspended, or in the event that radio broadcasting is supported from other sources or operated by other than private interests, then as now prevail, LICENSEE shall promptly notify SOCIETY thereof, and either SOCIETY or LICENSEE may then terminate this agreement; and in such event, LICENSEE shall be under no further liability to SOCIETY for the payment of any license fee hereunder; provided, however, that if the license of said station to broadcast is suspended for a period less than the term of the within license, then in such event LICENSEE shall be relieved from payment of the license fee hereunder only during such period of suspension.

6. LICENSEE agrees upon request to furnish to SOCIETY during the term of the within license a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY or of which SOCIETY shall have the right to license the performing rights heretofore granted) broadcast from or through the said station, showing the title of each composition and the composer and/or author thereof; provided that LICENSEE shall not be obligated under this Article No. 6 to furnish such a list covering a period or periods in the aggregate during any one calendar year in excess of three months. The list so furnished by LICENSEE to SOCIETY shall be strictly confidential and SOCIETY covenants that it will make no disclosure thereof or of the contents thereof of its election so to do.

7. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially its present catalogue of compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY. SOCIETY reserves the right, however, at any time and from time to time to withdraw from its repository and from operation of the within license any musical composition or compositions; and upon any such withdrawal, LICENSEE may immediately cancel the within agreement by giving written notice to SOCIETY of its election so to do.

In the event of any such cancellation by LICENSEE, or in the event of a termination of this agreement and the within license pursuant to the provisions of Article No. 5 hereof, or otherwise, SOCIETY shall refund to LICENSEE pro rata license fees, if any, paid for a period beyond the date of such cancellation or termination.

8. Under the terms and conditions hereinabove set forth, LICENSEE agrees to pay to SOCIETY, as compensation for the within license, the sum of **FOUR HUNDRED and THIRTY-SEVEN and 50/100**

Dollars (\$ 437.50)
per annum, payable in equal monthly installments on or before the 10th of each month during the term hereof, plus, during each year of the term hereof, a sum equal to three percent (3%) of the gross amount of receipts of Licensees from the sale of broadcasting facilities for programs in which music copyrighted or composed by members of Society is rendered, until such receipts shall have reached **\$21,873.80**
TWENTY-ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE and 00/100 Dollars;
and five percent (5%) of all such receipts in excess of the foregoing amount.

It is, however, understood and agreed that in no event shall the total aggregate sum payable by Licensee to Society during any single year of the term hereof be less than **ONE THOUSAND SEVEN HUNDRED and FIFTY and 00/100 (\$1,750.00) Dollars,** and the deficit, if any, of such total aggregate sum in respect of any single year to the last stated amount shall be paid within thirty days of the receipt by Licensee from Society of a bill covering such deficit.

(Continued Over)

Provided, however, that gross receipts of the Licensee in respect of all commercial ("spot") announcements either interpolated between or preceding or following programs containing music copyrighted or composed by members of Society shall be subject to percentage payments as aforesaid. Public service announcements such as time announcements, weather and market reports, etc., shall be exempt from such percentage payments, as shall also be broadcasts of political conventions, civic gatherings, parades, public functions and sports events, such as football and baseball games, as to music played thereat by bands attendant at such events. Nor shall any percentages be payable to Society in respect of service charges connected with the transmission of a non-commercial program from a remote control point to the studio of Licensee.

LICENSEE shall render monthly statements to SOCIETY on or before the 10th of each month covering the period of the preceding calendar month on forms supplied gratis by SOCIETY, and shall include in such statement all gross receipts, without exception, during the said month from the sale of the broadcasting facilities ("time on the air") of the said station for programs wherein any music copyrighted or composed by members of SOCIETY shall have been included. Which said statement shall be rendered under oath and accompanied by the remittance due SOCIETY under the terms hereof. Any such statement may also include a deduction by or credit to the LICENSEE for any amount reported by it as received during a prior month from the sale of its broadcasting facilities but which it has been compelled to refund as a "time discount." In the event that any such item shall be collected after it has been credited or deducted as aforesaid, it shall then be included again in the net receipts of LICENSEE on the monthly statement next succeeding the date of the actual collection.

9. SOCIETY shall have the right, by its duly authorized representative, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify any such monthly statement of accounting as may be rendered pursuant hereto; provided that such examination does not interfere with the usual conduct of business by LICENSEE.

It is understood and agreed that SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

10. Upon any breach or default of any terms herein contained, SOCIETY may give LICENSEE ten (10) days notice in writing to repair or correct such breach or default and in the event that such breach or default has not been repaired or corrected within said ten (10) days, SOCIETY may then forthwith cancel said license.

11. SOCIETY agrees to indemnify, save and hold LICENSEE harmless, and defend LICENSEE from and against any claim, demands or suits that may be made or brought against the LICENSEE with respect to renditions given during the term hereof in accordance with this license of musical compositions contained in SOCIETY'S repertoire heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY.

In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall forthwith give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY shall have sole and complete charge of the defense of any action or proceeding in which any such notice, process, paper or pleading is served. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and properly to prosecute any appeals taken therein.

In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made, or begun against LICENSEE on account of the rendition of any musical composition contained in the SOCIETY'S repertoire but NOT heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein.

12. In the event of any change in the ownership or control of the said station whereby it becomes less than 51% directly owned and controlled by the LICENSEE, SOCIETY may, at its option, cancel and terminate this license upon 30 days' written notice.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

IN WITNESS WHEREOF, this agreement has been duly subscribed by SOCIETY and LICENSEE this 8th day of October, 1932.



AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By

Reginald Updegraff

HUSE PUBLISHING COMPANY

By

John H. Huse

Licensor

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PLAINTIFFS' EXHIBIT 17.

September 6, 1939

Gross Revenue

State of Nebraska

Jan. 1, 1928 to June 30, 1939

Year	General	Radio	Motion Pictures	Restaurants	Hotels	Dance Halls	Miscellaneous	Total
1928.....	\$11,202.50	\$6,274.44	\$8,049.84	\$218.00	\$257.00	\$3,070.74	\$435.00	\$17,476.94
1929.....	10,568.15	8,888.74	9,137.72	1,421.75	427.09	2,972.09	612.50	19,456.89
1930.....	12,618.31	10,920.45	10,362.16	1,869.41	704.00	3,134.50	951.20	23,538.76
1931.....	13,422.12	11,871.85	11,116.17	1,420.57	720.00	2,809.00	698.81	25,923.97
1932.....	10,869.95	9,446.44	8,004.01	643.34	540.00	1,361.74	212.85	20,316.39
1933.....	.....	16,538.20	12,701.20	1,841.30	985.00	3,220.92	1,328.43	.....
1934.....	.....	19,769.09	5,791.72	1,023.50	365.00	1,260.33	489.53	28,568.78
1935.....	.....	34,165.32	\$65,162.82	\$8,437.87	\$3,998.09	\$17,829.32	\$4,728.32	34,340.24
1936.....	.....	37,233.93	.....	.....	.....	.....	.....	51,186.59
1937.....	.....	43,712.70	.....	.....	.....	.....	.....	53,998.48
1938.....	.....	48,712.69	.....	.....	.....	.....	.....	54,474.64
1/1/39- 6/30/39..	\$58,681.03	\$276,614.05	.....	.....	.....	.....	.....	68,789.54
								38,010.28
								\$435,451.50

[fol. 1338]

PLAINTIFFS' EXHIBIT 18

Disbursements—State of Nebraska

Year	General Expense	Commissions	Legal Expense	Total
1932.....	\$3,448.32	\$4,422.37	.....	\$7,870.69
1933.....	3,412.00	4,560.97	.....	8,002.97
1934.....	4,085.40	5,144.20	\$273.93	9,503.53
1935.....	5,504.64	5,684.40	246.91	11,435.95
1936.....	6,075.76	5,467.83	346.82	11,890.41
1937.....	7,707.23	3,556.46	115.34	11,379.03
	<u>\$30,233.35</u>	<u>\$28,866.23</u>	<u>\$983.00</u>	<u>\$60,082.58</u>

[fol. 1339]

PLAINTIFFS' EXHIBIT No. 20

G. M. Harman

Songs and Total Copies Sold

Title	Copies Sold	Publi- cation Date	Publisher
After the Ball.....	2,000,000	1892	Chas. K. Harris
Babes in the Woods.....	1,500,000	1916	Harms, Inc.
Bambalina.....	1,500,000	1923	Harms, Inc.
Beautiful Ohio.....	1,000,000	1918	Shapiro Bernstein
Because I Love You.....	1,000,000	1926	Berlin
Best Things in Life Are Free.....	1,000,000	1927	DeSylva, Brown & Henderson
Bicycle Built For Two.....	2,000,000		Free in United States
Black Bottom.....	1,000,000	1926	Harms, Inc.
Blue Room.....	1,500,000	1926	Harms, Inc.
Blue Skies.....	1,000,000	1927	Berlin
Bye Bye Blackbird.....	1,000,000	1926	Remick
Charleston.....	1,500,000	1923	Harms, Inc.
Cherie, I Love You.....	1,000,000	1926	Harms, Inc.
Collegiate.....	1,000,000	1925	Shapiro Bernstein
Come Along, My Mandy.....	1,000,000	1910	Harms, Inc.
Crinoline Days.....	1,000,000	1922	Berlin
Cup of Coffee, a Sandwich and You.....	1,000,000	1925	Harms, Inc.
Deep in My Heart.....	1,000,000	1924	Harms, Inc.
Down By the Old Mill Stream.....	2,500,000	1910	Forster Music Pub.
The Girl Friend.....	1,500,000	1926	Harms, Inc.
Give My Regards to Broadway.....	1,000,000	1909	F. B. Haviland Pub. Co.
Hallelujah.....	1,000,000	1927	Harms, Inc.
Has Anybody Here Seen Kelly.....	1,000,000	1909	T. B. Harms Co.
I Might Be Your Once In a While.....	1,500,000	1919	Harms, Inc.
I Want To Be Happy.....	1,000,000	1924	Harms, Inc.
If You Were the Only Girl in the World.....	1,500,000	1916	B. Feldman & Co.
I'm Always Chasing Rainbows.....	1,500,000	1918	Robbins
I'm Forever Blowing Bubbles.....	1,000,000	1919	Remick
Indian Love Song.....	1,000,000	1924	Harms, Inc.
Irene.....	1,000,000	1919	Feist
It Ain't Gonna Rain No More.....	1,500,000	1923	Forster Music Pub.
I've Got a Feeling I'm Falling.....	1,000,000	1929	Santly Bros., Inc.
Japanese Sandman.....	1,500,000	1920	Remick
Just a Cottage Small.....	1,000,000	1925	Harms, Inc.
Just Like a Melody.....	1,000,000	1928	Donaldson, Douglas & Gumble
Just a Love Nest.....	2,000,000	1920	Victoria Pub. Co.
Just a Memory.....	1,000,000	1927	Harms, Inc.

[fol. 1340]

Title	Copies Sold	Publication Date	Publisher
Katinka.....	1,000,000	1915	G. Schirmer, Inc.
Keep the Home Fires Burning.....	3,000,000	1915	Chappell & Co.
Kiss in the Dark.....	1,500,000	1922	M. Witmark & Sons
K-K-K-Katie.....	1,500,000	1918	Feist
Last Long Mile.....	1,500,000	1917	T. B. Harms Co.
Learn to Smile.....	1,000,000	1921	Victoria Pub. Co.
Left All Alone Again Blues.....	1,000,000	1920	T. B. Harms Co.
Let Me Call You Sweetheart.....	1,000,000	1910	Paull-Pioneer
Let's Do It, Let's Fall in Love.....	1,500,000	1928	Harms, Inc.
Limehouse Blues.....	1,500,000	1922	Chappell-Harms
Little Gray Home in the West.....	2,000,000	1911	Chappell & Co.
Look for the Silver Lining.....	1,000,000	1920	T. B. Harms Co.
Love Sends a Little Gift of Roses..	1,000,000	1919	T. B. Harms Co.
Lover, Come Back To Me.....	1,000,000	1928	Harms, Inc.
Lucky Day.....	1,000,000	1926	Harms, Inc.
Madelon.....	2,000,000	1919	Remick
Maine Stein Song.....	1,000,000	1930	Carl Fischer Inc.
Mammy.....	1,500,000	1929	Berlin
Marcheta.....	2,500,000	1913	John Franklin Music Co.
Margie.....	1,500,000	1920	W. B. & S.-Mills Music
Memory Lane.....	1,000,000	1924	Harms, Inc.
Moonlight and Roses.....	1,500,000	1925	Villa Moret
My Blue Heaven.....	1,500,000	1927	Feist
My Heart Stood Still.....	1,000,000	1927	Harms, Inc.
Neath the South Sea Moon.....	1,000,000	1922	Harms, Inc.
No Foolin'.....	1,000,000	1926	Harms, Inc.
Oh, How I Hate to Get Up in the Morning.....	1,500,000	1918	Berlin
Oh, How I Miss You Tonight.....	1,000,000	1915	Berlin
Old Man River.....	1,000,000	1927	T. B. Harms Co.
Old Pal of Mine.....	1,000,000	1918	G. Ricordi & Co.
An Old-Fashioned Wife.....	1,000,000	1917	Harms, Inc.
Over There.....	2,000,000	1917	Feist
Pack Up Your Troubles.....	2,500,000	1915	Harms, Inc.
Poor Butterfly.....	2,000,000	1916	Harms, Inc.
A Pretty Girl Is Like a Melody....	1,500,000	1919	Berlin
Put On Your Old Gray Bonnet....	1,000,000	1909	Remick
Ramona.....	2,000,000	1927	Feist
Red Hot Mamma.....	1,000,000	1924	Rainbow Music Corp.
Remember.....	1,000,000	1925	Berlin
Rio Rita.....	1,500,000	1926	Feist
Rose Marie.....	1,750,000	1924	Harms, Inc.

[fol. 1341]

St. Louis Blues.....	2,500,000	1914	Handy Bros.
Sheik of Araby.....	1,500,000	1921	W. B. & S.-Mills Music
Shine On Harvest Moon.....	1,500,000	1908	Remick
Sidewalks of New York.....	2,000,000	1894	Paull-Pioneer
Smiles.....	2,000,000	1917	Remick
Some of These Days.....	1,500,000	1910	Will Rossiter
The Song Is Ended.....	1,500,000	1927	Berlin
Sonny Boy.....	1,500,000	1928	DeSylva, Brown & Henderson
Sweet Adeline.....	2,500,000	1903	Witmark
Sweet Rosie O'Grady.....	1,750,000	1896	Mills Music
Tea for Two.....	1,500,000	1924	Harms, Inc.
Tell Me Little Gypsy.....	1,500,000	1920	Berlin
There's a Long, Long Trail.....	3,000,000	1913	Witmark
Till the Clouds Roll By.....	1,500,000	1917	Harms, Inc.

Title	Copies Sold	Publication Date	Publisher
Till We Meet Again.....	1,500,000	1918	Remick
Tipperary.....	2,000,000	1912	B. Feldman & Co. (Chappell-Harms)
Valencia.....	2,000,000	1926	Harms, Inc.
Waltz Me Around Again, Willie...	1,500,000	1906	Marks
What'll I Do.....	1,500,000	1924	Berlin
When Day Is Done.....	1,500,000	1902	Feist
When You Were Sweet Sixteen....	2,000,000	1896	Shapiro Bernstein
Whispering.....	1,500,000	1920	Sherman, Clay
Who.....	1,750,000	1925	T. B. Harms Co.
Wildflower.....	1,500,000	1923	Harms, Inc.

Love Will Find A Way

- 1) by Burke & Dubin/pub. Witmark 1929 (Theme Song of "In the Heat of the Night")
- 2) by Fraser-Simpson & Graham/pub. Ascherberg, Hopwood & Crew/pub. Leo Feist Inc. 1927 (from opera "The Maid of the Mountains")
- 3) by Robyn & Blossom/pub. Witmark 1903 (from "Yankee Consul")
- 4) by Sissle & Blake/pub. Witmark 1921 (from "Shuffle Along")
- 5) by Harry Von Tilzer & W. van Brunt/pub. Harry Von Tilzer 1917

Because of You

- 1) by Broones & John/pub. Chappell & Co. 1933 (from "Give Me a Ring")
 - 2) by Caryl & Beresford/pub. Will Rossiter 1918
 - 3) by Jurmann & Dubin/pub. Harms 1931 (from "Her Majesty Love")
 - 4) by Woodman & Flammer/pub. G. Schirmer Inc. 1916
 - 5) by Florito & Hirsch/pub. Feist 1925
- many others with same title.

(Here follows 1 photolithograph, side folio 1342)

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PLAINTIFF'S EXHIBIT NO. 21

SUMMARY OF NUMBER OF LICENSES IN EFFECT

CLASSIFIED AS TO STATES FROM DEC. 31, 1922 TO DEC. 31, 1932

STATES	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
ALABAMA	27	32	57	75	107	121	148	145	147	139	133	154	188	208	220	229	221	227
ALASKA						7	8	8	10	9	12	5	11	12	12	11	7	7
ARIZONA	14	13	13	39	48	50	58	58	54	55	53	55	63	75	82	88	103	132
ARKANSAS	25	15	15	84	110	116	135	147	133	107	90	100	123	155	189	172	185	193
CALIFORNIA	545	638	685	714	808	901	1012	981	1004	1089	1081	1084	1815	2034	2325	2043	2120	2181
COLORADO	111	118	145	134	238	243	283	245	233	209	198	234	271	297	319	384	383	318
CONNECTICUT	91	138	185	195	212	212	199	198	184	202	184	185	190	228	372	413	375	392
CUBA											44	44	44	44	44	44	50	50
DELAWARE	10	15	24	23	28	25	37	41	40	44	37	37	41	47	58	59	52	50
DIST. COLUMBIA	30	51	53	102	98	97	85	85	85	85	77	85	90	93	89	108	114	117
FLORIDA	45	63	84	158	225	195	175	200	217	238	230	242	291	318	387	430	485	485
GEORGIA	50	62	90	112	158	177	199	211	197	188	192	198	245	282	289	281	281	305
HAWAII									1	48	48	48	48	54	51	55	55	55
IDaho	17	31	52	55	61	73	84	87	94	101	105	99	134	141	180	148	153	149
ILLINOIS	447	514	589	745	911	1005	1089	1040	952	902	882	1004	1288	1548	1801	1743	2003	2087
INDIANA	453	448	552	571	583	688	675	652	591	529	508	520	713	738	830	884	900	910
IOWA	111	170	215	382	548	597	529	605	584	528	499	480	801	484	504	538	504	575
KANSAS	39	40	51	340	537	545	635	664	702	720	612	677	580	602	603	513	519	583
KENTUCKY	81	148	158	192	210	225	298	233	212	178	175	179	212	257	251	253	301	308
LOUISIANA	98	101	145	177	215	279	309	300	313	183	215	198	289	357	302	382	482	472
MAINE	137	189	189	229	219	203	211	204	197	195	157	188	113	117	137	141	130	131
MARYLAND	508	295	237	237	242	305	302	303	320	389	304	338	331	380	522	514	527	521
MASSACHUSETTS	488	467	502	580	631	640	653	652	635	608	532	501	521	455	502	542	779	885
MICHIGAN	211	189	322	437	524	685	785	935	940	845	799	1011	1231	1315	1379	1283	1433	1484
MINNESOTA	107	404	430	475	470	482	515	508	372	439	374	321	508	549	712	745	885	889
MISSISSIPPI	27	31	33	45	72	109	130	141	140	82	51	51	59	55	52	101	158	150
MISSOURI	378	275	288	437	570	588	805	772	639	577	582	554	632	583	624	685	590	589
MONTANA	7	20	18	23	30	34	48	73	55	55	55	54	181	179	208	211	211	205
NEBRASKA	31	43	108	219	282	319	392	394	428	455	433	392	421	404	397	374	380	391
NEVADA	2	2	2	2	2	1	17	22	25	25	25	21	27	22	45	50	57	53
N. HAMPSHIRE	123	118	112	189	133	131	130	138	138	134	123	105	110	104	118	148	148	154
NEW JERSEY	115	188	298	425	484	484	530	570	584	544	552	541	483	544	619	587	1283	1358
NEW MEXICO			21	31	32	34	48	50	58	45	52	48	51	77	53	108	108	119
NEW YORK	1081	1217	1333	1555	1630	1755	1994	1950	2280	2210	2011	1943	2247	2685	2831	3113	3255	3532
N. CAROLINA	29	54	108	125	149	171	199	182	171	152	118	154	252	285	325	377	379	403
N. DAKOTA	1	10	52	68	102	111	114	100	101	75	58	54	93	91	87	94	92	99
OHIO	289	513	782	988	1055	1105	1138	1251	1308	1175	1159	1258	1330	1452	1590	1690	2237	2285
OKLAHOMA	47	25	30	52	225	238	254	299	310	327	322	217	288	297	308	389	382	389
OREGON	111	124	154	175	192	194	225	204	198	198	205	153	303	351	352	339	333	348
PENNSYLVANIA	579	829	1032	1045	1173	1217	1338	1380	1258	1273	1138	1129	1218	1445	1748	1682	2205	2407
PORTO RICO											1	1	2	2	2	101	125	132
RAZDE ISLAND	54	59	55	74	81	81	78	80	73	73	73	88	98	60	70	104	137	134
S. CAROLINA	22	23	24	39	40	52	80	72	74	85	85	102	140	141	143	157	181	174
S. DAKOTA	8	42	103	140	157	171	187	180	134	125	115	131	131	144	141	180	178	170
TENNESSEE	30	54	83	99	134	148	164	180	153	155	158	167	185	197	214	217	289	291
TEXAS	295	150	177	484	520	560	650	758	571	589	530	582	722	855	1100	1187	1205	1209
UTAH		59	58	93	119	123	139	135	131	127	128	134	154	155	163	174	173	174

S. DAKOTA	8	42	103	140	167	171	187	180	134	125	118	131	144	141	160	178	170
TENNESSEE	30	54	83	99	134	146	164	180	153	155	158	167	188	197	214	217	280
TEXAS	298	180	177	464	580	560	680	798	671	589	530	682	722	684	1100	1187	1805
UTAH	88	88	93	118	123	138	135	131	127	128	134	154	155	153	174	173	174
VERMONT	64	65	53	57	65	60	64	65	75	74	68	53	61	62	64	65	64
VIRGIN ISLE.																	
VIRGINIA	12	21	105	125	148	183	195	171	174	174	135	143	259	300	284	347	389
WASHINGTON	187	221	248	288	295	292	334	293	288	288	255	243	511	525	528	525	554
W. VIRGINIA	88	103	124	112	114	141	203	184	172	138	123	111	127	158	187	202	270
WISCONSIN	118	175	180	208	310	340	382	910	948	881	885	888	947	905	807	845	941
WYOMING	8	17	18	80	25	34	41	50	55	53	53	55	68	75	78	77	75
TOTALS -	7507	8853	10320	13042	15316	16862	18533	18015	16885	16043	17006	17282	20733	22137	22053	22876	23617

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[fol. 1343]

PLAINTIFFS' EXHIBIT 22

(pp. 1122 and 1123 of Copyright Hearings, 1936)

The income from the sale of sheet music and books of music has been:

1927.....	\$17,146,715	1931.....	\$12,203,657
1929.....	16,537,747	1933.....	2,340,723

Considerable diminution of income to authors and composers occurred as radio took the place of the phonograph, with the result that few records were sold. The R. C. A. Manufacturing Co., makers of Victor records, the largest record manufacturers in the world, report that using the 1925 sales as 100 per cent minimum, the total sales in the succeeding years were as follows:

	Percent		Percent
1926.....	127	1931.....	27
1927.....	150	1932.....	13
1928.....	149	1933.....	13
1929.....	139	1934.....	18
1930.....	65		

The Department of Commerce reports the sales of phonograph records as follows:

1921.....	\$47,843,856	1929.....	\$34,128,735
1923.....	36,372,410	1931.....	7,697,787
1925.....	26,790,847	1933.....	2,562,082
1927.....	31,781,443		

Another source of income to the author and composer, which was diminished through the advent of radio, were the mechanical royalties received from the sale of perforated music rolls. According to statistics of the Department of Commerce the value of music rolls was as follows:

1923.....	\$ 5,261,614	1929.....	\$ 2,555,544
1925.....	6,067,529	1931.....	428,186
1927.....	3,216,960		

The income from mechanical royalties of six representative publishers in the popular-music publishing field has been:

1924.....	\$ 638,380.56	1930.....	\$ 284,139.81
1925.....	714,724.80	1931.....	173,668.57
1926.....	936,224.72	1932.....	79,337.53
1927.....	852,588.82	1933.....	51,770.88
1928.....	723,689.72	1934.....	22,482.20
1929.....	562,267.20		

[fol. 1344] The income from mechanical royalties of six representative publishers in the standard music-publishing field has been:

1924.....	\$ 27,701.01	1929.....	\$ 13,560.84
1925.....	19,012.77	1930.....	7,724.12
1926.....	13,767.90	1931.....	5,390.67
1927.....	11,771.85	1932.....	4,744.90
1928.....	15,300.12	1933.....	3,345.88

PLAINTIFF'S EXHIBIT NO. 29

Table 19

FEDERAL COMMUNICATIONS COMMISSION
Accounting Department

Summary of responses of broadcast stations to Commission Order No. 38

Income items of broadcast stations by States and broadcast regions
1937

State and broadcast region (Col. 1)	Number of stations (Col. 2)	Stations with net sales of \$25,000 or more								All commercial stations				
		Network (Col. 3)	Local (Col. 4)	National spot (Col. 5)	Total (Col. 6)	Talent and misc. sales (Col. 7)	Gross sales (Col. 8)	Less: Agency commissions (Col. 9)	Net sales (Col. 10)	Number of stations (Col. 11)	Net sales (Col. 12)	Total expenses (Col. 13)	Net broadcast revenue (Col. 14)	Net income (Col. 15)
NORTHERN DISTRICT	254	\$16,890,112	\$22,854,032	\$17,232,224	\$56,976,368	\$4,273,610	\$60,652,578	\$4,745,969	\$55,906,609	328	\$57,147,880	\$43,476,075	\$13,671,765	\$11,514,462
Northeastern Region—Total	111	7,701,234	11,552,578	6,404,580	25,662,332	1,776,049	27,438,381	2,140,551	25,297,830	140	25,751,497	19,694,341	6,057,156	5,053,092
Connecticut	8	392,913	429,066	294,282	1,116,261	37,291	1,153,552	72,094	1,081,458	9	1,105,619	964,141	137,478	34,019
Delaware	8	483,802	763,380	283,904	1,471,086	37,810	1,508,896	98,779	1,410,117	9	1,411,852	994,655	417,197	399,177
Maryland	5	167,558	198,937	110,397	476,892	25,767	502,659	19,761	482,898	13	600,830	473,223	127,607	77,205
Massachusetts	15	1,094,865	1,640,394	359,267	3,174,526	78,999	3,253,525	280,217	2,973,308	15	2,977,308	2,485,470	491,838	449,807
New Jersey	4	366,693	941,062	1,946,364	2,854,119	421,771	3,275,890	422,341	2,853,549	9	2,914,567	2,392,045	522,522	475,621
New York	35	3,357,527	3,805,634	2,326,866	9,490,027	639,438	10,129,465	649,950	9,479,515	45	9,640,264	7,229,672	2,410,592	2,099,570
Pennsylvania	29	1,184,939	2,830,461	1,198,512	5,213,912	431,343	5,722,255	441,209	5,281,046	33	5,351,356	3,915,350	1,436,006	1,202,642
Rhode Island	3	310,946	245,638	134,952	690,936	1,474	692,412	46,077	646,335	3	646,335	423,564	222,771	166,577
District of Columbia	4	321,589	654,006	111,776	1,087,371	102,116	1,189,487	110,523	1,078,964	4	1,082,964	672,221	410,743	179,094
Great Lakes Region—Total	89	6,181,728	7,786,530	7,478,687	21,446,945	1,689,166	23,136,111	1,998,273	21,137,838	112	21,610,899	16,114,575	5,496,324	4,716,449
Illinois	23	1,128,708	2,862,599	2,997,431	5,988,738	610,572	6,599,310	552,336	6,046,974	30	6,180,421	4,754,561	1,425,860	1,280,199
Indiana	12	262,093	739,302	377,141	1,378,536	63,498	1,442,034	94,476	1,347,558	16	1,457,629	1,117,890	339,739	298,378
Kentucky	6	386,632	359,599	384,149	1,010,380	1,164	1,011,544	61,471	950,073	6	950,073	753,729	196,344	151,755
Michigan	14	1,017,776	1,497,032	1,278,968	3,793,776	248,651	4,042,427	373,984	3,668,443	17	3,714,294	2,674,233	1,040,061	834,774
Ohio	18	3,176,119	1,861,879	2,296,947	7,334,945	595,971	7,930,916	895,121	7,035,795	22	7,074,042	4,998,524	2,075,518	1,810,577
West Virginia	5	44,448	363,861	180,795	589,104	42,204	631,308	26,420	604,888	7	670,635	574,948	95,687	80,422
Wisconsin	11	225,912	722,298	423,296	1,371,506	127,106	1,498,612	34,265	1,464,347	14	1,563,645	1,260,690	302,955	256,244
Midwest Region—Total	94	2,407,130	3,516,244	3,345,617	9,268,951	808,395	10,078,086	607,145	9,470,941	76	9,785,444	7,667,199	2,118,245	1,744,921
Iowa	9	408,557	555,973	641,763	1,606,293	154,129	1,760,422	142,542	1,617,880	11	1,821,734	1,417,606	404,128	316,784
Kansas	8	121,638	321,024	210,661	653,323	31,441	684,764	21,948	662,816	13	731,203	690,308	40,895	26,021
Minnesota	10	443,017	843,875	602,423	1,889,315	200,218	2,089,533	153,814	1,935,719	12	2,042,269	1,547,043	495,226	422,346
Missouri	14	896,488	1,244,841	1,153,967	3,295,296	321,447	3,616,743	204,357	3,412,386	17	3,473,621	2,604,751	868,870	700,412
Nebraska	7	341,740	296,596	372,544	1,010,880	93,773	1,104,653	60,998	1,043,655	10	1,096,349	874,052	222,297	211,877
North Dakota	3	185,960	112,125	97,077	395,162	3,179	398,341	13,393	384,948	8	384,085	308,595	75,490	63,090
South Dakota	3	29,610	118,690	61,142	209,442	122	209,564	10,493	199,071	5	236,223	224,804	11,419	4,393
SOUTHERN DISTRICT	105	2,941,109	5,444,675	3,765,015	12,150,799	644,345	12,875,144	631,944	12,243,200	166	13,134,785	10,273,775	2,861,010	2,539,752
Southeastern Region—Total	70	1,955,621	3,312,862	2,414,992	7,683,535	328,079	8,011,614	371,364	7,640,250	111	8,225,516	6,497,319	1,728,197	1,513,903
Alabama	6	93,776	293,094	94,294	481,164	22,301	503,465	17,544	485,921	11	596,225	432,862	163,363	88,262
Arkansas	6	45,308	181,475	117,035	343,818	23,822	367,640	18,235	349,405	17	514,697	454,646	59,051	46,808
Mississippi	10	332,535	427,676	340,128	1,100,339	20,012	1,120,351	33,972	1,086,379	15	1,141,784	947,909	193,875	167,733
Florida	6	273,703	364,278	343,661	981,642	13,382	995,024	65,948	929,076	13	1,015,856	701,584	314,272	291,333
Georgia	9	306,407	322,446	326,167	1,015,043	29,346	1,044,389	49,662	994,727	12	1,050,722	787,892	262,830	226,495
North Carolina	9	234,939	416,848	393,857	1,045,644	63,223	1,108,867	65,600	1,043,267	13	1,123,457	837,425	286,032	236,186
South Carolina	5	34,377	242,043	71,351	347,771	9,714	357,485	34,017	323,468	6	323,292	330,395	6,103	2,722
Tennessee	12	403,892	704,705	433,804	1,542,401	67,434	1,609,835	76,044	1,533,791	13	1,570,154	1,306,040	264,114	205,340
Virginia	7	188,731	300,329	294,695	783,755	78,845	862,600	12,262	850,338	11	923,409	753,786	169,623	140,605
South Central Region—Total	35	1,085,428	2,131,413	1,350,073	4,566,914	356,540	4,923,454	260,580	4,662,874	55	4,913,209	3,775,456	1,137,753	1,085,899
Oklahoma	6	286,114	413,800	343,904	1,043,818	62,866	1,106,684	54,317	1,052,367	14	1,186,873	1,001,702	185,171	150,394
Texas	29	739,314	1,717,613	906,039	3,362,966	293,400	3,656,366	202,263	3,454,103	41	3,724,336	2,774,794	949,542	875,955
EASTERN DISTRICT	84	2,869,516	5,723,958	2,119,297	10,712,771	773,737	11,486,508	800,497	10,686,011	130	11,363,153	9,639,865	1,723,288	1,557,914
Mountain Region—Total	24	621,865	1,521,174	431,685	2,574,724	236,706	2,811,430	154,980	2,656,450	47	3,027,614	2,540,040	487,574	379,046
Arizona	3	94,339	167,717	51,829	273,885	42,451	316,336	8,131	308,205	6	333,629	284,670	48,959	44,383
Colorado	7	262,539	647,056	102,669	1,012,264	102,175	1,114,439	92,002	1,022,437	15	1,126,634	1,022,192	104,442	84,378
Wyoming	4	-	127,480	22,721	150,201	63	150,264	3,907	146,357	6	193,335	173,432	19,903	14,376
Idaho	4	27,845	155,912	92,563	276,310	55,732	332,042	11,378	320,664	7	361,189	278,137	83,052	62,842
Montana	3	4,838	118,536	26,413	154,187	5,531	159,718	5,032	154,686	8	210,559	192,486	18,073	7,457
New Mexico	3	270,070	364,467	135,030	769,567	30,794	800,361	34,530	765,831	5	802,272	603,503	198,769	163,290
Pacific Region—Total	60	2,844,051	4,142,704	1,647,672	8,634,427	537,031	9,171,458	645,517	8,525,941	83	8,335,539	7,079,225	1,256,314	998,828
California	36	1,565,636	2,866,421	1,043,213	5,535,270	331,535	5,866,805	515,042	5,351,763	49	5,505,111	4,702,932	722,179	584,808
Oregon	7	261,143	374,479	250,175	885,797	33,048	918,845	34,351	884,494	13	918,845	772,580	146,265	122,637
Washington	15	421,832	821,804	354,284	1,637,920	172,448	1,810,368	95,324	1,715,044	21	1,831,996	1,523,773	308,223	241,943
UNITED STATES	443	22,141,137	34,024,665	23,117,136	79,282,938	5,731,692	85,014,630	6,178,410	78,836,220	624	81,649,718	63,389,715	18,260,003	15,412,128

- Deficit or other reverse item.

NOTE: - Of the 624 responses accounted for in this table, 5 cover 2 stations each. Thus the table actually embraces data for 629 stations.

PLAINTIFF'S EXHIBIT NO.32

NOTE: EACH UNIT IS PERFORATED TO BE PLACED ON 3 x 5 INDEX CARD

6-28

TITLE: ALHAMBRA

COMP: W. P. Chambers

AUTH:

PUBL: Carl Fischer, Inc. (ASCAP)

TITLE: ALICE IN WONDERLAND

COMP: Charles Tobias

AUTH: Jack Scholl
Murry Mencher

PUBL: Leo Feist, Inc. (ASCAP)

TITLE: ALHAMBRA

COMP: Ernesto Lecuona

AUTH:

PUBL: E.B. Marks Music Corp. (ASCAP)

TITLE: ALITA

COMP: F. H. Losey

AUTH:

PUBL: Carl Fischer, Inc. (ASCAP)

TITLE: ALI HABA

COMP: Ernesto Lecuona

AUTH: Sonny Miller

PUBL: Schuster-Miller, Inc. (ASCAP)

TITLE: ALL ALONE

COMP: Irving Berlin

AUTH:

PUBL: Irving Berlin, Inc. (ASCAP)

TITLE: ALICE BLUE

COMP: Ferde Grofe

AUTH:

PUBL: Robbins Music Corp. (ASCAP)

TITLE: ALL ALONE

COMP: Harry Von Tilzer

AUTH: Wm. Dillon

PUBL: Harry Von Tilzer Mus. Pub. Co. (ASCAP)

TITLE: ALICE BLUE GOWN

COMP: Harry Tierney

AUTH: Joseph McCarthy

PUBL: Leo Feist, Inc. (ASCAP)

TITLE: ALL ALONE MONDAY

COMP: Harry Ruby

AUTH: Bert Kalmar

PUBL: Harms, Inc. (ASCAP)

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823

7
TTL: LET'S GO COUNTRY

COMP: Joseph B. Peavey

COPY-
RIGHT
1936

AUTH:

PUBL: unp. Joseph B. Peavey (NM)

1346A
Not a part of Olf. Ex. 32

The
A S C A P
Index



American Society of Composers, Authors & Publishers
Thirty Rockefeller Plaza
New York City

1347

824

The ASCAP Index

As a service to broadcasters ASCAP announced in August, 1937, the preparation of its index to musical compositions, to be available, *entirely free of charge*, to all stations in the U.S.A. willing to accept the service.

Since that time six installments of the Index have been completed and forwarded to all subscribing broadcasters, and such comment as has been received has been uniformly complimentary. In all cases where the Index has been installed it has been found an extremely useful and worthwhile aid in the building of programs, checking of copyright ownerships, identification of titles and compositions, etc.

To date the Index includes some 76,000 of the titles most used in broadcasting—and the seventh installment, shortly to be forwarded will add some 14,000 titles—covering all published musical compositions copyrighted in 1938 and as well all unpublished works copyrighted by ASCAP members.

It should be distinctly borne in mind that the Index is *not limited* to works of ASCAP members, but, to the extent that we can secure the information, covers the listings of non-members as well.

The Index to date covers practically all musical compositions used by broadcasters in the year 1935; all of the published compositions listed in the U.S. Catalog of Copyright Entries (Part III) in the years 1936, 1937 and 1938—and all of the unpublished compositions of members of ASCAP copyrighted during those years. It is ASCAP's intention to henceforth keep the Index as closely as possible current with the U.S. Catalog of Copyright Entries (Part III) and to work backward from 1935 in that Catalog until the Index shall include for practical purposes all of the music under copyright in the U.S.A. which a broadcaster is likely to find occasion or necessity to use.

Complete alphabetical listing of all music publishers so far as known to us is included in the Index. Copyrighted arrangements of non-copyrights are listed on blue paper—to distinguish them from original copyrights which are printed on white. "Restricted" compositions are also indexed.

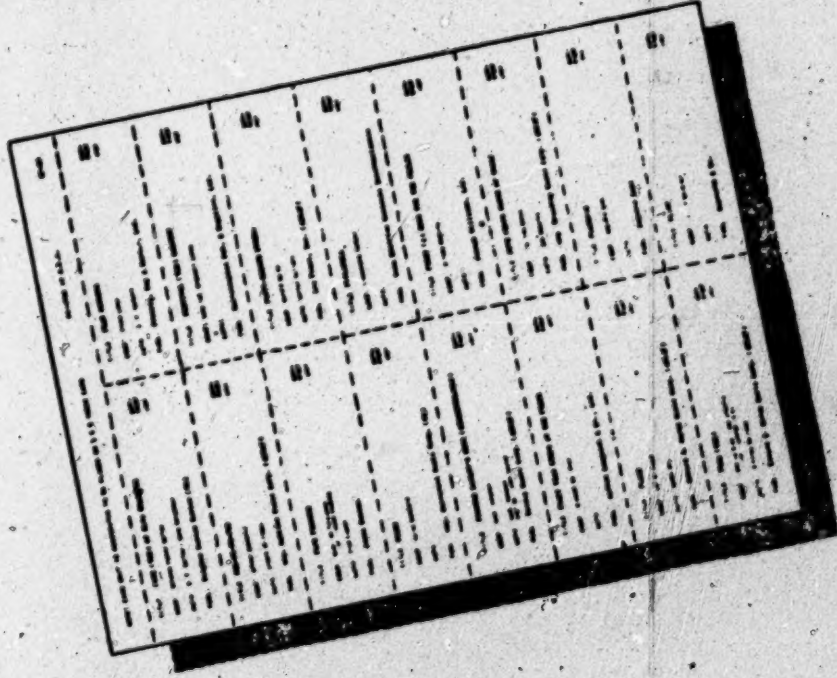
The ASCAP Index represents the first attempt ever made, so far as we know, to produce a comparatively complete card index to all copyrighted musical compositions. It is a

tremendous task, involving much careful research, checking and re-checking; and though every possible precaution is taken to avoid errors some must inevitably occur, and the co-operation is asked of all concerned in calling every discovered error promptly to our attention so that corrective notice may at once be generally distributed.

Therefore, while the Index will be copied from records upon which we ourselves rely, ASCAP definitely does not "warrant and guarantee" accuracy as of any particular date or as to any particular item listed. We will however upon request promptly re-check any questioned entry and warrant correctness of response to such special enquiries.

PREPARATION OF ASCAP INDEX

The Index is furnished in the form of perforated sheets of gummed paper, 16 titles to a sheet, arranged to be torn apart at the perforations and each title separately pasted upon a 3 x 5 card. If a station is not staffed to conveniently do this work, the printer who produces the Index will furnish cards and do the pasting for \$2.25 per thousand cards. In



Typical sheet of titles from ASCAP Index, gummed and perforated.

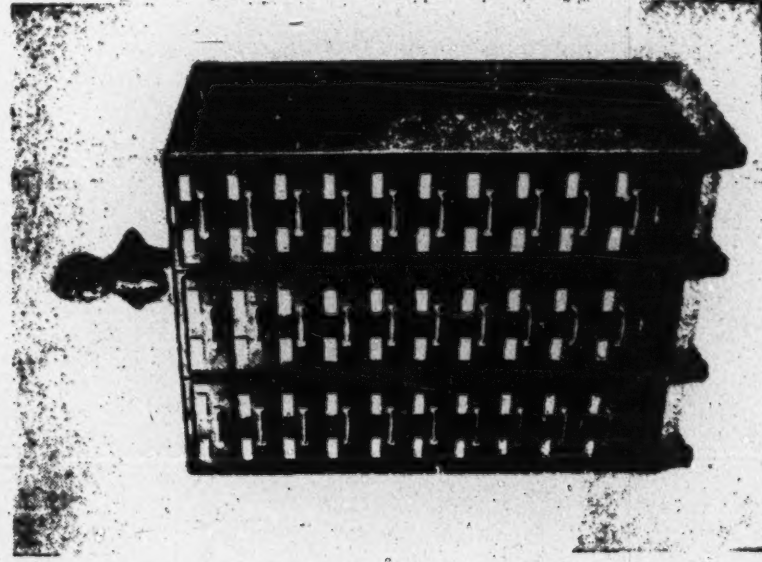
most cases it is much cheaper and more efficient for the broadcaster to have this pasting done than to attempt it in the studio with inexperienced personnel.

Guide Cards

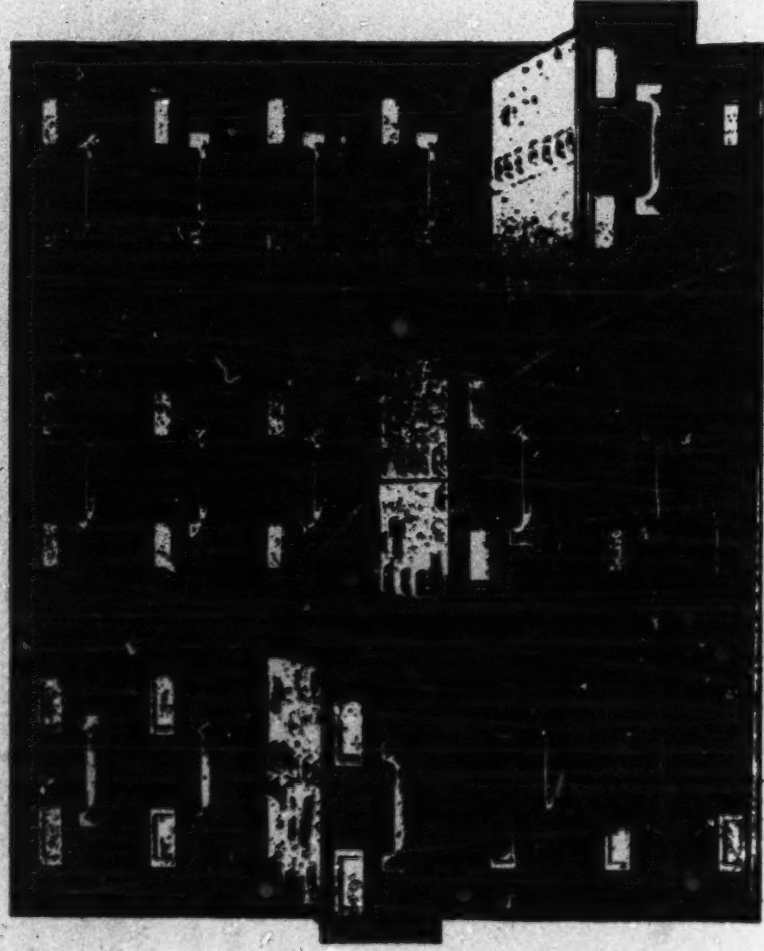
To facilitate the filing and subsequent speedy location of a particular title, it is recommended that guides of what is known as the "Wabash Natural System of Indexing" be used. Our own experience shows this to be the most efficient guide system available for this particular Index. Full particulars and price of this Index-guide may be obtained from Metal Office Furniture Company, 205 East 42nd St., New York City.

Filing Cabinets

We use, and recommend the "Steelcase" 10-drawer cabinet, No. 1221. Each drawer of this model has two compartments, 26" deep, for 3 x 5 cards. One unit will accommodate about 50,000 cards. The price of this cabinet is about \$120 f.o.b. Grand Rapids, Mich. Full information may be had upon inquiry of your local dealer in such equipment, or Metal Office Furniture Company, Grand Rapids, Michigan. Floor space required for 3 cabinets is 30" deep by 40" wide.



The ASCAP Index and cabinets required to accommodate it, with guide cards, as compiled to date. Three cabinets are required.



Close-up showing open drawers with Index and guide cards.

Uses of the ASCAP Index

Purposes to be served by the Index include:

1. Checking programmed musical compositions to ascertain in advance of performance the copyright ownership to avoid infringement through performing copyrighted compositions for which the station does not hold license.
2. Facilitate the work of program building by providing complete and authentic information re title, composer, author, publisher, year of copyright, etc., of most (and finally, when completed, all) compositions which the broadcaster is likely to use.
3. Provide indexed storage facilities wherein the broadcaster may insert cards covering his library of phonograph records, electrical transcriptions, etc., and maintain on such cards reference records as to location in library, date of purchase, dates and numbers of uses, and other useful data.
4. Encourage the program personnel in a habit of carefully checking, in advance of performance, copyrighted ownerships, proper titles, etc.

Cost of Installation

The approximate cost of complete installation of the ASCAP Index to date would be about as follows:

The ASCAP Index.....	No charge
Estimated express charges.....	\$ 3.00
Cost for pasting (optional).....	171.00
3 "Steelcase" cabinets, No. 1221, or equivalent—about	360.00
1 "Wabash Natural Index" guides.....	70.00
	<hr/>
	\$604.00
Estimated clerical cost of placing cards in Index in alphabetical order....	100.00
	<hr/>
	\$704.00

In General

Entirely regardless of differences of opinion amongst broadcasters themselves, or between them and ASCAP as to the most practicable and just formula under which copyright licenses should be secured, there remain the fundamental facts that broadcasting is "public performance for purposes of profit"; that such performance of a copyrighted musical work is unlawful unless licensed by the copyright owner, and that the obligation rests upon the broadcaster to ascertain the ownership and secure license of the owner, *before* thus publicly performing his copyrighted work.

No matter whether music licenses are held from societies such as ASCAP, or from individuals, and no matter how much or how little they cost, and no matter what formula governs the use, the careful and law-abiding broadcaster should equip his station and staff so as to minimize the hazard of making illegal use of copyrights or any other property.

ASCAP's endeavor is to assist the broadcaster, in every possible way, to build up in his own studio and under his own control an efficient and comprehensive Index which besides great practical usefulness incident to program building will afford a reasonable insurance against musical copyright infringement. To this end it has undertaken the onerous task and incurred the very substantial cost of preparing and offering the ASCAP Index.

Program builders, musical directors, and all concerned are invited to query us regarding any matter in connection with which we may be of service.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

30 Rockefeller Plaza
New York City

New York, July 10, 1939



1353

830

AMERICAN SOCIETY OF COMPOSERS
AUTHORS AND PUBLISHERS

THIRTY ROCKEFELLER PLAZA

NEW YORK CITY



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Resume
ASCAP Foreign Accounts
1936 - 1939

	1936		1937		1938		1939	
	Received	Paid	Received	Paid	Received	Paid	Received	Paid
Argentina.....	2,080.76			222.28			2,122.11	2,496.60
Australia.....			4,305.21					
Austria.....		4,000.00	3,616.24	22,727.49	18,572.98	23,060.28	29,345.62	34,524.26
Belgium.....						200.00		908.53
Brazil.....	748.50				711.16	892.60		
Bulgaria.....								
Canada.....	20,220.28		35,279.94		35,069.04			454.27
Czechoslovakia.....	125.86							
Denmark.....	3,450.34	500.00			6,884.59	1,127.27	3,011.51	1,817.07
England.....	109,314.21	95,000.00	121,527.83	95,000.00	160,992.11	240,777.57		58,876.91
Finland.....			165.61	487.07	166.41	471.00		
France.....	115,591.74		86,944.66	46,512.42	56,443.60	92,352.96	41,075.10	83,161.46
Germany.....		120.00			26,849.74	36,662.51	12,356.05	14,536.53
Hungary.....			7,255.60	2,580.46	1,775.94	2,249.93	1,158.38	1,362.80
Italy.....	14,590.03		210.52		25,056.01	26,983.05	14,190.08	16,694.21
Jugo Slavia.....							564.78	
Norway.....	2,612.64			1,389.26		3,436.95	808.67	5,451.20
Poland.....							1,507.30	
Portugal.....	175.45		137.32	277.85	123.70	139.22	237.49	908.53
Rumania.....			477.00		2,085.19	300.00	361.43	
Spain.....								237.41
Sweden.....	13,212.69				22,532.03	682.95		566.48
Switzerland.....			4.21	277.85		139.22	5.74	
	282,122.50	99,620.00	259,924.14	169,474.68	357,262.50	429,505.51	106,744.26	221,996.26

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Neb. Trial Exhibit No. 38

WILLIAM J. MILL

TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
ALL I WANT IS JUST A LITTLE CABIN		SHAPIRO, BERNSTEIN & CO.	JULY 13, 1935		
ALONE AT A TABLE FOR TWO	D. RICHMAN/T. FIORITO	SHAPIRO, BERNSTEIN & CO.	DEC. 23, 1935		
ANGELINE	T. WALLER	EXCLUSIVE PUBLICATIONS	AUG. 5, 1932		
ARE YOU SURE YOU LOVE ME	P. DE ROSE	SUPERIOR MUSIC INC.	MAY 8, 1933		
ARIZONA MOON	W. RASKIN/F. RUSH	MILLS MUSIC INC.	APR. 13, 1931		
BELLS OF NORMANDIE	J. KLENNER	SHAPIRO, BERNSTEIN & CO.	JUNE 14, 1935		
BILLY HILL'S AMERICAN HOME SONGS		SHAPIRO, BERNSTEIN & CO.			
BLUE CHINA ROSE	K. PARKER	EXCLUSIVE PUBLICATIONS	JULY 29, 1932		
BLUE MOON BAY	W. RASKIN/G. SAHRT	VINCENT YOUMANS INC.	NOV. 25, 1929		
BUGGY (THE) SONG	J. YOUNG	SHAPIRO, BERNSTEIN & CO.	DEC. 13, 1933		
BUILD YOUR NEST IN THE WEST		MO OLURE PUB. CO.	DEC. 27, 1926		
BULL FIDDLE BLUES		EXCLUSIVE PUBLICATIONS	AUG. 5, 1932		
CABIN IN THE CAROLINES	E. BURNETT	SHAPIRO, BERNSTEIN & CO.	1938		
CARABBA : SEE A STREET IN HAVANA					
CARMENITA	L. YOELL	FLORINTINE MUSIC CO.	NOV. 13, 1923		
CLEAR LAKE HIGHLAND MOON	L. YOELL	OLEAR LAKE HIGHLAND CO.	APR. 14, 1925		
CLOUDS WILL SOON ROLL BY	H. WOODS	SHAPIRO, BERNSTEIN & CO.	JUNE 2, 1932		
COLORADO MEMORIES		SHAPIRO, BERNSTEIN & CO.	SEPT. 12, 1935		
COME HOME TO PEACEFUL VALLEY	H. MANNERS	MASON MUSIC CO.	MAY 15, 1933		
COLORADO MOON	A. FRAZZINI/J. LEVENSON	SHAPIRO, BERNSTEIN & CO.	JULY 20, 1933		
CROSS THE BAY FROM MANALAY	A. SMITH		JUNE 11, 1926		
DADDY OF NINE	R. LANDFIELD		FEB. 26, 1924		
DON'T LET THE FIRE GO OUT		SHAPIRO, BERNSTEIN & CO.	AUG. 22, 1936		
DOWN THE OLD TORONTO ROAD		SHAPIRO, BERNSTEIN & CO.	FEB. 7, 1934		
DREAM RIVER		JOE MORRIS MUSIC CO.	FEB. 21, 1929		
DRIFTING BACK TO HONOLULU	A. HOFFMANN	MILTON WEIL MUSIC CO.	APR. 4, 1930		
DTING (THE) MOUNTAINEER : SEE					
TAKE THOSE MOUNTAINS OUT OF					
MY WAY					
EARLY IN THE MORNING BLUES			FEB. 24, 1934		
EARLY IN THE MORNING BLUES			NOV. 21, 1921		
EMPTY SADDLES		SHAPIRO, BERNSTEIN & CO.	APR. 23, 1936		RHYTHM ON THE RANGE
EVERYBODY SINGS A LOVE SONG IN THE	A. SOLMAN	HARMS INC.	APR. 21, 1931		
SPRING					
EVERYBODY WANTS SOMEBODY THAT	R. LANFIELD		FEB. 26, 1924		
BELONGS TO SOMEBODY ELSE		SHAPIRO, BERNSTEIN & CO.	AUG. 27, 1934		
EVERYTHING HAS CHANGED BUT YOU	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	DEC. 18, 1934		
FACE (THE) IN THE FIREPLACE			APR. 3, 1926		
FADED ROSE					
FATHER, MOTHER, SISTER AND	A. BRYAN	SHAPIRO, BERNSTEIN & CO.	DEC. 15, 1933		
BROTHER	A. SOLMAN/D. WIMBROW	LEO FEIST INC.	JUNE 18, 1929		
FOR REALY AND ME	E. MADRIGUERA	SHAPIRO, BERNSTEIN & CO.	AUG. 22, 1932		
FORGOTTEN LOVE		SHAPIRO, BERNSTEIN & CO.	APR. 9, 1936		
GLORY OF LOVE		SHAPIRO, BERNSTEIN & CO.	MAR. 7, 1934		
GOLDEN HARVEST DAYS	S. LEWIS	SOUTHERN MUSIC PUB CO.	AUG. 8, 1932		NO CRAVY FOLIO
GOLDEN MOUNTAIN					
GONNA BUILD A LITTLE SHACK		SHAPIRO, BERNSTEIN & CO.	MAY 23, 1934		
'GROSS THE RAILROAD TRACK	T. KURRUS	OLMAN MUSIC CORP.	JAN. 4, 1933		
HAPPY DREAMS	V. YOUNG/J. YOUNG	LEO FEIST INC.	SEPT. 2, 1932		
HANDS ORGAN					
HAVE YOU EVER BEEN LONELY? HAVE		SHAPIRO, BERNSTEIN & CO.	JAN. 20, 1933		
YOU EVER BEEN BLUE?	P. DE ROSE		OCT. 19, 1925		
HABANAN SERENADE	M. DOLIN/L. CAMPBELL				
HIDE AWAY : SEE 'SUMMER TIME'					
HITCH THE BUGGY TO THE OLD GRAY					
HARE : SEE 'THE BUGGY SONG'					
HORN AND LADDER II		EXCLUSIVE PUBLICATIONS	AUG. 15, 1932		
I TRIED TO MAKE SOMEONE SORRY			AUG. 20, 1926		
I WONDER WHAT'S BECOME OF MY					

LIST OF COMPOSITIONS WRITTEN BY WILLIAM J. HILL CONT.

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
UNDER WHERE MY OLD GIRL IS TO-NIGHT	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	OCT. 25, 1935		
IF I HAD SOMEBODY TO LOVE	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JULY 20, 1935		
I'LL TELL THE WORLD SHE'S MINE	J. BROWN	COOPERATIVE MUSIC CO.	JULY 18, 1921		
I'M A GAMBLER IN LOVE		EXCLUSIVE PUBLICATIONS	JULY 29, 1932		
I'M GOIN' TO YODEL MY WAY TO HEAVEN	J. MARVIN	SOUTHERN MUSIC PUB. CO.	SEPT. 9, 1932		
I'M STROLLING IN DREAMS		DE SYLVA, BROWN AND HENDERSON INC.	NOV. 19, 1932		
I'M UNDERING WHAT I'LL DO	J. BROWN	ADRIAN REECE CO. INC.	JULY 20, 1921		
IN A CHAPEL IN THE MOONLIGHT	O. BERGMAN	SHAPIRO, BERNSTEIN & CO.	OCT. 14, 1936		
IN THE DARK		SHAPIRO, BERNSTEIN & CO.	SEPT. 26, 1935		
ON A LITTLE TOWN ACROSS THE BORDER	M. WAYNE	LEO FEIST INC.	AUG. 24, 1933		
ON A LITTLE TWO-BY-FOUR FOR TWO	A. HOFFMAN	JOL MORRIS MUSIC CO.	MAR. 19, 1928		
ON THE MISSION BY THE SEA	A. SOLMAN/O. KREMER	SHAPIRO, BERNSTEIN & CO.	JULY 20, 1933		
IT'S THE SAME OLD TOWN			MAR. 19, 1934		
IT'S THE SAME OLD TOWN			MAR. 4, 1926		
I'VE GOT A LITTLE SHACK WAY WAY BACK IN CLEAR LAKE HIGHLANDS	L. YOELL	OLEAR LAKE HIGHLAND CO.	APR. 14, 1925		
I'VE GOT SOMETHING TO LIVE FOR NOW	H. STRIDE	SHAPIRO, BERNSTEIN & CO.	NOV. 6, 1933		
JUST AROUND THE BEND FROM THE RAINBOW'S END	F. & J. NO GRAY	SOUTHERN MUSIC PUB. CO.	OCT. 3, 1932		
JUST A LITTLE SHOP-BORN		SHAPIRO, BERNSTEIN & CO.	MAY 13, 1932		
JUST AN OLD FASHIONED MOTHER	I. KAUFMAN	SKIDMORE MUSIC CO. INC.	APR. 29, 1932		
JUST SAY ALOHA	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	OCT. 20, 1936		
LANGUAGE (THE) OF LOVE	E. MADRIGUERA/O. FRIEND	KORNHEISER MUSIC CO.	DEC. 7, 1932		
LAST (THE) ROUND-UP		SHAPIRO, BERNSTEIN & CO.	AUG. 21, 1933		
LEAVES OUT		SHAPIRO, BERNSTEIN & CO.	DEC. 12, 1935		
LITTLE BLACK SHAWL		SHAPIRO, BERNSTEIN & CO.	MAY 22, 1934		BILLY HILL'S AMERICAN HOME SONGS
LITTLE (A) BLUE HOUSE IN A LITTLE GREEN LAKE		SHAPIRO, BERNSTEIN & CO.	OCT. 30, 1934		
LITTLE (A) HEARER HEAVEN		SHAPIRO, BERNSTEIN & CO.	AUG. 6, 1935		
LITTLE OLD SWYTH' GROUND		SHAPIRO, BERNSTEIN & CO.	MAY 22, 1934		BILLY HILL'S AMERICAN HOME SONGS
LITTLE SWEETHEART OF THE PRAIRIE	A. SOLMAN	HARRIS INC.	JAN. 22, 1931		
LITTLE TAY PIANO		SHAPIRO, BERNSTEIN & CO.	AUG. 27, 1934		
LOOKED UP IN PRISON	J. BURNS	SKIDMORE MUSIC CO. INC.	OCT. 13, 1932		
LOVELY LITTLE TOWN	J. MARVIN	SHAPIRO, BERNSTEIN & CO.	NOV. 25, 1933		
LOOKING THRU THE WINDOW OF THE HOUSE YOU CAN'T COME IN	W. RASKIN	SHAPIRO, BERNSTEIN & CO.	MAY 14, 1932		
LOST	D. RUSSO/F. RUSH	MILTON WEIL MUSIC CO.	DEC. 11, 1931		
LOUISVILLE LADY	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JUNE 9, 1933		
MARCH OF DREAMS	A. SOLMAN	M. WITHARK & SONS	JAN. 5, 1933		
MARYAMA - TOMORROW	M. WAYNE	SHAPIRO, BERNSTEIN & CO.	MAY 18, 1933		
MARY'S THE TIME	L. YOELL		NOV. 15, 1921		
MARY'S THE TIME			JAN. 25, 1927		
MAY I HAVE THIS WALTZ WITH YOU		KORNHEISER MUSIC CO.	NOV. 30, 1932		
MADAME	E. MADRIGUERA	SHAPIRO, BERNSTEIN & CO.	MAY 22, 1934		BILLY HILL'S AMERICAN HOME SONGS
MEET ME TO-NIGHT IN THE OLD MEETIN' HOUSE					
MOON OVER MONTEREY	M. WAYNE	HARRIS INC.	JULY 26, 1933		
MOUNTAINEER'S (THE) SWEETHEART		SKIDMORE MUSIC CO.	OCT. 13, 1932		
NIGHT AFTER NIGHT	G. JAMES	MORRIS MUSIC PUB. CO.	NOV. 10, 1928		
NIGHT ON THE DESERT		SHAPIRO, BERNSTEIN & CO.	MAY 10, 1934		ZIEGFELD FOLLIES
NODDY KNOWS WHAT I DO IN MY DREAMS		EXCLUSIVE PUBLICATIONS	AUG. 5, 1932		
NODDY SINGS ME A LOVE SONG	J. CALDWELL		MAR. 18, 1927		
NODDY SINGS ME A LOVE SONG	L. STALLUP		AUG. 14, 1926		
OH, MUKI MUKI, OH, WHICH MEANS I LOVE YOU SO	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	APR. 23, 1934		

LIST OF COMPOSITIONS WRITTEN BY WILLIAM J. HILL CONT.

TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
OLD (THE) COVERED BRIDGE		SHAPIRO, BERNSTEIN & CO.	MAR. 7, 1934		
OLD FASHIONED NIGHT IN JUNE			JUNE 16, 1926		
OLD MAN OF THE MOUNTAIN	V. YOUNG	EXCLUSIVE PUBLICATIONS	JULY 5, 1932		
OLD MAN'S PARADISE I SEE					
ALL I WANT IS JUST A LITTLE CABIN					
OLD (THE) SPINNING WHEEL		SHAPIRO, BERNSTEIN & CO.	MAR. 22, 1933		
ON THE GOOD OLD SANTA FE	W. RASKIN	SHAPIRO, BERNSTEIN & CO.	MAR. 21, 1935		
ON A LITTLE STREET IN SINGAPORE	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JULY 12, 1937		
ON THE OREGON TRAIL	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	DEC. 14, 1934		
ON THE ROAD TO AVALON	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	MAY 23, 1934		
ON THE SHORES OF THE WESTERN SEA	W. RASKIN/F. RUSH	FORSTER MUSIC INC.	JUNE 26, 1930		
ON THE OZARK MOUNTAIN TRAIL	A. SOLMAN	HARRIS INC.	JULY 10, 1931		
ONCE UPON A TIME	A. SOLMAN	VINCENT YOUMANS INC.	AUG. 21, 1929		
ONLY A DREAM		SHAPIRO, BERNSTEIN & CO.	AUG. 15, 1933		
ONLY A DREAM	W. RASKIN		NOV. 14, 1929		
OREGON (THE) TRAIL	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	MAY 31, 1935		
PEACE OF MIND		SHAPIRO, BERNSTEIN & CO.	NOV. 19, 1935		
PEACEFUL VALLEY I SEE					
SOME HOME TO PEACEFUL VALLEY					
PENALTY (THE) OF LOVE	D. LEE	KORNHEISER INC.	NOV. 24, 1931		
PLAYMATES		SHERMAN O'LAY & CO.	FEB. 3, 1925		
POOR LITTLE BISOLETTE	J. ETTLINGER	UNIVERSAL MUSIC CO. INC.	JUNE 15, 1931		
PRAIRIE LULLABY		KORNHEISER, SCHUSTER	JAN. 6, 1934		
PUT ON AN OLD PAIR OF SHOES	MRS. BILLY HILL	SHAPIRO, BERNSTEIN & CO.	FEB. 5, 1935		
RAIN	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	SEPT. 14, 1934		
RIFFLE ALONG LITTLE BROOK	C. GASKILL	SHAPIRO, BERNSTEIN & CO.	FEB. 10, 1934		
ROCK ME TO SLEEP IN MY ROCKY MOUNTAIN HOME	W. RASKIN/F. HOWARD/ N. VINCENT	W. J. COLE PUB. CO.	FEB. 2, 1931		
ROCKAWAY MY BABY BLUES	L. YOELL	JOE GOODWIN MUSIC CORP.	MAR. 9, 1923		
ROCKAWAY MY BABY ME	J. CALDWELL		MAR. 14, 1927		
ROLLIN' HOME	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JUNE 7, 1934		
ROSE OF MONTEREY	L. YOELL/H. BRYANT	SHERMAN O'LAY & CO.	JUNE 8, 1922		
SODIE (THE) CHANGES		SHAPIRO, BERNSTEIN & CO.	MAY 19, 1936		
SHADY LANE			MAR. 1, 1926		
SHOWER YOUR BLESSINGS ON MEE					
SEE RAIN					
SING NO MORE	D. LEE	SHAPIRO, BERNSTEIN & CO.	OCT. 11, 1933		
SLEEPY HEAD	M. GUNSKY/J. BROWN	MILLS INC.	JAN. 17, 1921		
SMOKE FROM A CHIMNEY	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JAN. 17, 1937		
SOMETHING TO REMEMBER	K. VACEK	SHAPIRO, BERNSTEIN & CO.	MAY 31, 1935		
SO LITTLE TIME	P. DE ROSE	SHAPIRO, BERNSTEIN	1938		
STAY A LITTLE CLOSER TO ME		SHAPIRO, BERNSTEIN & CO.	MAY 22, 1934		
STREET IN HAVANA		SHAPIRO, BERNSTEIN & CO.	NOV. 6, 1935		
SUMMER TIME			JAN. 25, 1927		
SUMMER TIME			APR. 5, 1926		
SWEET MISERY OF LOVE	S. SIMONS	SKIDMORE MUSIC CO.	JUNE 30, 1936		
SWEETHEART I'M ON MY WAY	A. SOLMAN	IRVING BERLIN INC.	MAR. 14, 1929		
TAKE THOSE MOUNTAINS OUT OF MY WAY	W. RASKIN/O. HILL	MILLS MUSIC CORP.	OCT. 12, 1931		
TEN HOURS A DAY - SIX DAYS A WEEK		SHAPIRO, BERNSTEIN & CO.	OCT. 7, 1932		
TENNESSEE MOON	L. YOELL/J. BROWN		DEC. 3, 1921		
THAT OLD SHADY LANE			MAR. 19, 1934		
THAT'S WHAT I CALL HEAVEN	D. WIMBROW/A. SOLMAN	DE SYLVA, BROWN, HENDERSON	FEB. 27, 1929		
THAT'S WHEN YOUR HEARTACHES BEGIN	F. FISHER/W. RASKIN	FISHER MUSIC CO.	1937		
THAT'S WHERE THE SOUTH BEGINS	T. WALLER	EXCLUSIVE PUBLICATIONS	JULY 29, 1932		
THERE'S A BLUE NOTE IN MY SONG OF LOVE	W. RASKIN/A. SOLMAN	VINCENT YOUMANS INC.	AUG. 21, 1929		
THEN YOU'LL UNDERSTAND	L. YOELL/J. BROWN	COOPERATIVE MUSIC PUB.	JULY 20, 1921		

LIST OF COMPOSITIONS BY WILLIAM J. HILL CONT.

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
THERE'S A BEAUTIFUL LAND CALLED SOMEWHERE	J. MARVIN/J. ETTLINGER	METRO-GOLDWYN-MAYER	MAR. 23, 1931		
THERE'S A GARDEN IN THE PINES		SHAPIRO, BERNSTEIN & CO.	APR. 25, 1933		
THERE'S A HOME IN WYOMING	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	OCT. 27, 1933		
THERE'S A LITTLE BOX OF PINE ON THE 7229	J. ETTLINGER/D. LEE	SHAPIRO, BERNSTEIN & CO.	OCT. 21, 1932		
THERE'S NO LIGHT IN THE LIGHT- HOUSE TONIGHT	J. ETTLINGER	TRUE STORY SONGS INC.	SEPT. 3, 1931		
THERE'S NO LIGHT IN THE WINDOW	V. YOUNG	EXCLUSIVE PUBLICATIONS	AUG. 11, 1932		
THERE'S A WILD ROSE THAT GROWS ON THE SIDE OF THE HILL		SHAPIRO, BERNSTEIN & CO.	MAY 22, 1934		
THEY CUT DOWN THE OLD PINE TREE TENDER	W. RASKIN/E. ELISOU	MILLER MUSIC INC.	NOV. 25, 1929		
TIN PAN ALLEY	B. EMERICH	SHAPIRO, BERNSTEIN & CO.	OCT. 5, 1936		
TREE THAT FATHER PLANTED FOR ME		SHAPIRO, BERNSTEIN & CO.	FEB. 21, 1925		
TRILIGHT DOWN IN TENNESSEE	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	NOV. 16, 1933		
TWO LITTLE WINDOWS AND ONE LITTLE DOOR		SHAPIRO, BERNSTEIN & CO.	JUNE 12, 1933		
VILLAGE BY THE SEA	B. LEWIS	SHAPIRO, BERNSTEIN & CO.	NOV. 3, 1933		
WAGON WHEELS	L. YOELL/J. BROWN	COOPERATIVE MUSIC PUB.	JULY 20, 1921		
WAS IT THE MOONLIGHT	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JAN. 19, 1934		
WAS THERE EVER A NIGHT LIKE THIS		SHAPIRO, BERNSTEIN & CO.	JULY 31, 1935		
WEDDING (THE) DOWN THAT NELLIE NEVER MORE	L.J. LITTLE	KORNHEISER INC.	JAN. 19, 1932		
WEDDING OF THE VALLEY AND THE HILLS	W. RASKIN	SHAPIRO, BERNSTEIN & CO.	SEPT. 30, 1929		
WEST (THE), A NEST AND YOU	W. RASKIN/E. ELISOU	VINCENT VOLMANS INC.	APR. 30, 1930		
WEST-COAST FREIGHT	L. YOELL	SHERMAN OLAY & CO.	JULY 31, 1922		
WHEN I HEAR THE SONG OF THE RIVER	A. SOLMAN	MILLS MUSIC INC.	AUG. 15, 1932		
WHEN I HEAR YOU SAY I LOVE YOU	L. STALLCUP	E.B. MARKS MUSIC CO.	DEC. 4, 1930		
WHEN I WAS A BOY FROM THE MOUNTAINS	V. YOUNG/J. KAPP	LEO FEIST INC.	AUG. 14, 1926		
WHEN LOVE KNOCKS AT YOUR HEART	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	MAY 25, 1932		
WHEN IT'S MOONLIGHT ON THE OLD MILL STREAM		SHAPIRO, BERNSTEIN & CO.	FEB. 21, 1935		
WHEN PANAMA STARTS STRUMMIN' ON HIS OLD GUITAR		SHAPIRO, BERNSTEIN & CO.	AUG. 16, 1933		
WHEN THE SUN HIDES AWAY FOR THE DAY	B. WARNER	SHAPIRO, BERNSTEIN & CO.	AUG. 16, 1933		
WHEN THERE'S JUST ONE PLACE LEFT TO GO		SHAPIRO, BERNSTEIN & CO.	JULY 8, 1936		
WHEN YOU PLAYED THE ORGAN AND I SANG AULD LANG SYNE		SHAPIRO, BERNSTEIN & CO.	FEB. 13, 1934		
WHILE THE BAND IS PLAYING	A. SOLMAN	E.B. MARKS MUSIC CO.	DEC. 15, 1931		
WHO DO YOU SUPPOSE			JAN. 25, 1927		
WHY AM I BLUE	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	JAN. 25, 1927		
WHY DID YOU LOVE ME AT ALL	M. SPENDER	SHAPIRO, BERNSTEIN & CO.	SEPT. 28, 1934		
YOU GOTTA NO DE NO	J.R. ROBINSON	DE SYLVA, BROWN, HENDER- SON	NOV. 19, 1932		
YOU SHOULD HAVE TOLD ME	E. MADRIQUERA	EXCLUSIVE PUBLICATIONS	JULY 12, 1932		
YOU'LL GROW SWEETER SWEETHEART	P. DE ROSE	SHAPIRO, BERNSTEIN & CO.	AUG. 30, 1935		
		SHAPIRO, BERNSTEIN & CO.	AUG. 16, 1935		

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LIST OF COMPOSITIONS

BY

JOHN PHILIP SOUSA

LIST OF COMPOSITIONS BY JOHN PHILIP SOUSA

TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
ABEND BEI SOUSA	ARR.-KARL HEISE	CHMEL			
ACROSS THE DANUBE	J. P. SOUSA	ELLIS			
AM ME					
ALWAYS FAITHFUL	ESTELLE CLARK				
AMERICA FIRST	ARR.-PALMER OLARK	CARL FISCHER INC.	APR. 21, 1930		
AMERICAN GIRL	LEONARD LIEBLING	HARMS INC.	MAR. 18, 1916		
AMERICAN MAID	LEONARD LIEBLING	JOHN CHURCH CO.	NOV. 9, 1909	JAN. 4, 1937-	THE GLASS BLOWERS
AMERICAN WEDDING MARCH		JOHN CHURCH CO.	MAR. 20, 1914	JANE VAN M. SOUSA	
AMMONIA		SAM FOX PUB. CO.	1898	MAY 6, 1926-	
ANCHOR AND STAR MARCH		JOHN CHURCH CO.		JOHN P. SOUSA	CHARLATAN
ANCIENT AND HONORABLE ARTILLERY COMPANY		JOHN PHILIP SOUSA	AUG. 22, 1918		
ANNABEL LEE	EDGAR ALLAN POE	SAM FOX PUB. CO.	JULY 23, 1924		
AT THE KING'S COURT		THEODORE PRESSER CO.	MAY 5, 1931		
AT THE MOVIES		JOHN CHURCH CO.	1905	FEB. 1933-	SUITE
ATLANTIC CITY PAGEANT		CARL FISCHER INC.	AUG. 28, 1922	JANE VAN M. SOUSA	SUITE
AVIATORS (THE)		SAM FOX PUB. CO.	SEPT. 26, 1927		
BALANCE ALL AND SWING PARTNERS		THEODORE PRESSER CO.	SEPT. 4, 1931		
BEAU IDEAL		CARL FISCHER INC.	AUG. 28, 1922		
BELLE OF BAYOU TECHE		CARL FISCHER INC.	APR. 17, 1893	MAR. 7, 1921-	
BELLE OF CHICAGO	O. E. LYNNE	JOHN CHURCH CO.	DEC. 11, 1911	JOHN P. SOUSA	
BEN BOLT MARCH		CARL FISCHER INC.	MAR. 6, 1894	FEB. 6, 1922-	
BEN HUR		OLIVER DITSON	DEC. 27, 1888	JOHN P. SOUSA	
BLACK HORSE TROOP		SAM FOX PUB. CO.	JULY 6, 1925	DEC. 26, 1916-	
BLACK MAN		JOHN CHURCH CO.	NOV. 1, 1910	JOHN P. SOUSA	
BLUE RIDGE I'M COMING BACK TO YOU		HARMS INC.	JUNE 27, 1917	JOHN P. SOUSA	
BONNIE ANNIE		J. W. PEPPER CO.			
BOOK OF AIRS FOR THE VIOLIN		FISCHER			
BOOK OF INSTRUCTIONS FOR TRUMPET & DRUM		FISCHER			
BOOTS		HARMS INC.	MAY 11, 1916		
BOUQUET OF BELOVED INSPIRATIONS	RUDYARD KIPLING	MSS			
BOY SCOUTS OF AMERICA		HARMS INC.	DEC. 16, 1916		
BOYS ARE HOME AGAIN		HAROLD FLAMMER INC.	DEC. 23, 1918		
BOYS IN NAVY BLUE		HARMS INC.	FEB. 4, 1918		
BRIDE ELECT		JOHN CHURCH CO.	1897	OCT. 17, 1925-	COMED OPERA
BULLETS AND BAYONETS		G. SCHIRMER INC.	FEB. 8, 1919	JOHN P. SOUSA	
CADETTE (GER. TITLE FOR HIGH SCHOOL CADETS)		ANTON J. BENJAMIN	OCT. 10, 1927		
CADETTE-MARSH	ARR.-LEOPOLD WENINGER	SAM FOX PUB. CO.	NOV. 11, 1921		
CAMERA STUDIES		SAM FOX PUB. CO.	OCT. 11, 1923		LEAVES FROM MY NOTES
CAMPFIRE GIRLS				MAY 3, 1924-	
CAPTAIN (EL)		JOHN CHURCH CO.	1897	JOHN P. SOUSA	
CAPRIAN TARA TELLA		THEODORE PRESSER CO.		JAN. 29, 1927-	THE BRIDE ELECT
CARD SONG		JOHN CHURCH CO.	1906	JOHN P. SOUSA	
CARRIER-PIGEON (THE)	HARRY BACHE SMITH	THEODORE PRESSER CO.		FEB. 1934-	THE FREE LAND
CENTURY OF PROGRESS		THEODORE PRESSER CO.	SEPT. 4, 1931	JANE VAN M. SOUSA	
CHANTY MAN'S MARCH		JOHN PHILIP SOUSA	JULY 13, 1918		
CHARIOT RACE		OLIVER DITSON			BEN HUR
CHARLATAN	CHARLES KLEIN	JOHN CHURCH CO.	1898	MAY 6, 1926-	OPERA
				JOHN PHILIP SOUSA	

LIST OF COMPOSITIONS BY JOHN PHILIP SOUSA - CONT'D

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
CHARLATAN LANCERS		JOHN CHURCH CO.	1898	SEPT. 23, 1926- JOHN P. SOUSA	
CHARLATAN MARCH		JOHN CHURCH CO.	1893	MAY 6, 1926- JOHN P. SOUSA	
CHARLATAN SELECTIONS		JOHN CHURCH CO.	1895	FEB. 1, 1927- JOHN P. SOUSA	
CHARLATAN WALTZES		JOHN CHURCH CO.	1895	OCT. 30, 1926- JOHN P. SOUSA	
CHILDREN'S BALL CHRIS AND THE WONDERFUL LAMP	GLEN MAGDONOUGH	SAM FOX PUB. CO. JOHN CHURCH CO.	NOV. 11, 1921 1899	SEPT. 15, 1927- JOHN P. SOUSA	OPERA STUDIES OPERA
CIRCUMNAVIGATORS (THE) CLUB CO-EDS (THE) OF MICHIGAN COLUMBIA'S PRIDE CONGRESS HALL MARCH		THEODORE PRESSER CO. JOHN CHURCH CO. THEODORE PRESSER CO. JOHN CHURCH CO.	NOV. 27, 1931 MAY 5, 1925 DEC. 21, 1914 DEC. 31, 1885	DEC. 13, 1913- JOHN P. SOUSA AUG. 18, 1917- CARL FISCHER INC.	
COQUETTE (THE)		CARL FISCHER INC.	DEC. 28, 1889		
CRAFTY WILLIAM AND TIMID MAID CRUSADER (THE) MARCH		CARL FISCHER INC.	AUG. 28, 1922 MAR. 1, 1889	FEB. 17, 1917- JOHN P. SOUSA	AT THE MOVIES
CUCKOO GALOP DANCE HILARIOUS DAUGHTERS OF TEXAS DAUNTLESS (THE) BATTALION DEED I HAS TO LAUGH DEFILIER MARSCH DES CORCORAN KADETTEN DEFILIER MARSCH DES NATIONAL TRUPPE DESIREE DESTRUCTION OF POMPEII AND NYDIA'S DEATH DIPLOMAT (THE)	JOHN PHILIP SOUSA	LEE & WALKER JOHN CHURCH CO. JOHN CHURCH CO. JOHN CHURCH CO. ELLIS RUBLE RUBLE J. W. PEPPER JOHN CHURCH CO. JOHN CHURCH CO.	NOV. 16, 1922 APR. 2, 1930 MAR. 15, 1923		
DIRECTORATE (THE) MARCH		JOHN CHURCH CO.	SEPT. 29, 1894	MAR. 1932- JOHN P. SOUSA MAR. 16, 1922- JOHN P. SOUSA JAN. 13, 1917- JOHN P. SOUSA	OPERA LAST DAYS OF POMPEII
DO WE WE DO			JAN. 26, 1899		
THE DRAGONS DRAGONS (THE) DRIFTING TO LOVELAND DWELLERS IN THE WESTERN WORLD EASTER MONDAY ON THE WHITE HOUSE LAWN ENSIGN (THE) FAIREST OF THE FAIR		MSS MSS SAM FOX PUB. CO. JOHN CHURCH CO. JOHN CHURCH CO. JOHN CHURCH CO. SAM FOX PUB. CO. JOHN CHURCH CO.	NOV. 11, 1921 NOV. 1, 1910 APR. 24, 1929		OPERA OPERA STUDIES SUITE
FAITHLESS KNIGHT AND PHILOSOPHIC MAID		JOHN CHURCH CO.	1898	JAN. 2, 1936- JANE VAN M. SOUSA MAY 6, 1925- JOHN P. SOUSA	THE CHARLATAN
FANCY OF THE TOWN FANNY	GLEN MAGDONOUGH	MSS JOHN CHURCH CO.	1899	OCT. 15, 1927- JOHN P. SOUSA	CHRIS & THE WONDERFUL LAMP
FEAST OF THE MONKEYS		BOBBE MERRILL & CO.	1905	AUG. 1933- JANE VAN M. SOUSA	PIPETOEN SANDY
FEDERAL (THE) MARCH FESTIVAL FIFTH (THE) STRING FIGHTING (THE) RACE FLAGS OF FREEDOM FLASHING EYES OF ANDALUSIA FLOR (LA) DE SEVILLA	J. L. G. CLARKE	JOHN CHURCH CO. BOWEN-MERRILL CO. HAROLD FLAMMER INC. CARL FISCHER INC. SAM FOX PUB. CO. JOHN CHURCH CO.	JAN. 13, 1911 JAN. 6, 1902 MAY 29, 1919 OCT. 19, 1918 NOV. 11, 1921 MAY 3, 1929		OPERA STUDIES

LIST OF COMPOSITIONS BY JOHN PHILIP SOUSA - CONT'D

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
FOREVER AND A DAY	IRVING BISO	STASNY MUSIC CORP.	OCT. 27, 1927		
FOX COLLECTION OF SOUSA MARCHES		SAM FOX PUB. CO.	FEB. 14, 1927		
FOX LOOSE LEAF COLLECTION OF SOUSA MARCHES		SAM FOX PUB. CO.	JULY 5, 1926		
FREE LANCE	HARRY BACHE SMITH	JOHN CHURCH CO.	1906	FEB. 1934- JANE VAN M. SOUSA	COMIC OPERA
FREE LANCE MARCH		JOHN CHURCH CO.	1906	FEB. 1934- JANE VAN M. SOUSA	
FREE LANCE SELECTION		JOHN CHURCH CO.	1906	FEB. 1934- JANE VAN M. SOUSA	
FREE LANCE SONG "I AM A SALARIED WARRIOR"		JOHN CHURCH CO.	1906	FEB. 1934- JANE VAN M. SOUSA	THE FREE LANCE
FREE LUNCH CADETS		J. M. STODDART & CO.	1877		
FREIHEITS MARSCH		BOSWORTH & CO.			
FREUNDSCHAFTS MARSCH (GER. TITLE FOR "HANDS ACROSS THE SEA")		ANTON J. BENJAMIN			
FROM MAINE TO OREGON		JOHN CHURCH CO.	FEB. 11, 1913		THE GLASS BLOWERS
FUNERAL MARCH (SEE "HONORED DEAD")					
GALLANT SEVENTH		SAM FOX PUB. CO.	JULY 11, 1922		
GERIAL HOSTESS (THE)		SAM FOX PUB. CO.	OCT. 11, 1923		LEAVES FROM MY NOTE BOOK
GEORGE WASHINGTON BICENTENNIAL		SAM FOX PUB. CO.	NOV. 17, 1930		
GIRLS WHO HAVE LOVED	HARRY BACHE SMITH	JOHN CHURCH CO.	1906	FEB. 1934- JANE V. M. SOUSA	THE FREE LANCE
GLADIATOR MARCH		JOHN CHURCH CO.	DEC. 30, 1886	FEB. 13, 1914- JOHN P. SOUSA	
GLADIATORENMARSCH (GER. TITLE FOR "GLADIATOR")	ARR-KEMPFENDORFFSTEIN	RUHE			
GLASS (THE) BLOWERS	LEONARD LIEBLING	JOHN CHURCH CO.	NOV. 5, 1909	JAN. 4, 1937- JANE VAN M. SOUSA	LYRICAL COMEDY
GLIDING (THE) GIRL		JOHN CHURCH CO.	SEPT. 25, 1912		
GLOCKEN (DIE) VON CHICAGO (GER. TITLE FOR "BELLE OF CHICAGO")					
GLORY OF THE YANKEE NAVY	KENNETH B. CLARK	JOHN CHURCH CO.	SEPT. 23, 1909	JAN. 4, 1937- JANE VAN M. SOUSA	THE YANKEE GIRL
GOLDEN (THE) CARS	JOHN PHILIP SOUSA	JOHN CHURCH CO.	1897	MAR. 23, 1927- JOHN P. SOUSA	
GOLDEN JUBILEE		SAM FOX PUB. CO.	JULY 26, 1928		
GOLDEN STAR		CHAPPELL & CO., LTD.	MAR. 19, 1919		
GOOSE (THE) GIRL'S SONG	HARRY BACHE SMITH	JOHN CHURCH CO.	1906	FEB. 1934- JANE VAN M. SOUSA	THE FREE LANCE
GRAND FESTIVAL MARCH		JOHN CHURCH CO.	MAY 17, 1911		TALES OF A TRAVELER
GRAND PROMENADE AT THE WHITE HOUSE		JOHN CHURCH CO.	MAR. 30, 1914		
GREAT LAKES		HARMS INC.	FEB. 2, 1918		
GRIDIRON CLUB		SAM FOX PUB. CO.	JUNE 18, 1926		
GUIDE RIGHT		JOHN CHURCH CO.	DEC. 31, 1885	DEC. 13, 1913- JOHN CHURCH CO.	

LIST OF COMPOSITIONS BY JOHN PHILIP SOUBA

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHERS	COPYRIGHT DATE	RENEWED	REMARKS
MAIL TO THE SPIRIT OF LIBERTY		THEO. PRESSER	1900	MAY 25, 1928 JOHN P. SOUBA	
HAIR		JOHN CHURCH CO.	1906	FEB. 1934 JANE V.R. SOUBA	
HANDS ACROSS THE SEA		JOHN CHURCH CO.	1899	MAR. 21, 1927 JOHN P. SOUBA	
HARMONICA WIZARD		THEO. PRESSER CO.	OCT. 10, 1930	MAR. 21, 1927 JOHN P. SOUBA	
HAVE YOU GOT THAT TIRED FEELING		JOHN CHURCH CO.	1899	FEB. 1933 JOHN P. SOUBA	
HER GRACE, THE DUCHESS		JOHN CHURCH CO.	1905	FEB. 1933 JOHN P. SOUBA	
HER LADYSHIP, THE COUNTESS		JOHN CHURCH CO.	1905	FEB. 1933 JOHN P. SOUBA	
HER MAJESTY, THE QUEEN		JOHN CHURCH CO.	1905	SEP. 1933 JOHN P. SOUBA	
HIGH SCHOOL CADETS		CARL FISCHER INC.	1891	MAR. 7, 1921 JOHN P. SOUBA	
THE HIPPODROME		T.B. HARRIS			
HOCHZEITS MARSCH & GERMAN TITLE FOR "BRIDE ELECT" SEE					
HOMeward BOUND					
HONORED DEAD		CHURCH	MAY 26, 1886	APR. 10, 1914 JOHN P. SOUBA	
HOPING					
I AM A SALARIED WARRIOR					
SEE - "SONG OF THE FREE LANCE"					
I NEVER WAS RIGHT IN MY LIFE		CHURCH	OCT. 8, 1906	FEB. 1934 JANE V.R. SOUBA	FREE LANCE THREE QUOTATIONS
I TOO WAS BORN IN ARCADE		THEO. PRESSER	1896		
I WONDER		ELLIS			
IMPER FIDEL - GERMAN TITLE SEE -					
"SCHER FIDELIS"					
IMPERIAL EDWARD		JOHN CHURCH CO.	1902	FEB. 21, 1930 JOHN P. SOUBA	
IMPRESSIONS AT THE MOVIES		CARL FISCHER INC.	AUG. 28, 1922		
IN DARKEST AFRICA		JOHN CHURCH CO.	1896		
IN THE DIMNESS OF TWELIGHT	L. LIFELING	THEO. PRESSER			
IN FLANDERS FIELDS	JOHN MCCPAC	G. SCHIRMER INC.	FEB. 27, 1918		THREE QUOTATIONS GLASS BLOWERS ?
IN THE HOUSE OF BRUNO AND STRATONICE		JOHN CHURCH CO.	JULY 15, 1912		LAST DAYS OF POMPEII
IN THE LAND OF THE GOLDEN FLEECE		JOHN CHURCH CO.	OCT. 7, 1912		
IN MEMORIAM OF PRESIDENT GARFIELD		STOCK			
IN PULPIT AND PEW		(MSS)			
IN THE REALM OF THE DANCE		(MSS)			
INDIAN LOVE SONG	L. LIFELING	JOHN CHURCH CO.	1904		
INTABLIO					
INTERNATIONAL CONGRESS		CARL FISCHER INC.	JULY 15, 1913		
INVINCIBLE EAGLE		JOHN CHURCH	1901	MAR. 27, 1929 JOHN P. SOUBA	
IRISH DRAGON					
IT DEPENDS UPON THE AIR - SEE: HAIR					
I'VE BEEN FIGHTING		BOERS, MERRILE & CO.	1905	AUG. 1933 JANE V.R. SOUBA	PIPETOWN SANDY
I'VE MADE MY PLANS FOR THE SUMMER		CHURCH	MAY 10, 1907	JAN. 10, 1935 JANE V.R. SOUBA	
JACK TAR		JOHN CHURCH CO.	1903	MAY 29, 1931 JOHN P. SOUBA	
JAZZ AMERICA		(MSS)			
KADOTTEN MARSCH - SEE: ZWISBELIEBTE MARSCH					
KAFFER ON THE KAROO		JOHN CHURCH CO.	MAR. 30, 1914		TALES OF A TRAVELER-A
KALORAMA		(MSS)			

LIST OF COMPOSITIONS BY JOHN PHILIP SOUSA

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHERS	COPYRIGHT DATE	RENEWED	REMARKS
KANONIER MARSCH - GERMAN TITLE FOR "MAN BEHIND THE GUN"		THEO. PRESSER CO.	MAY 19, 1931		
KANSAS WILDCATS		JOHN CHURCH CO.			
KATHERINE OVERTURE		THEO. PRESSER CO.	MAY 3, 1921		
KEEPING STEP WITH THE UNION		HARMS INC.			
KELLY, BURKE AND SHEA		JOHN CHURCH CO.	1905		
KING COTTON		JOHN CHURCH	1896		
KING OF FRANCE					
KLANGE AUS DEM OCCIDENT		RUHLE, LEIPZIG	1904 - 08		
KREUEFAHRER MARSCH		RUHLE, LEIPZIG	1904 - 08		
KNEUZRITTER - GERMAN TITLE FOR "THE CRUSADER MARCH"					
LAMBS' GARBOLE		JOHN CHURCH CO.	MAY 7, 1915		
LANCERS		JOHN CHURCH CO.	1897		
LAST CRUSADE	ANNE HIGGINSON SPICER	JOHN CHURCH CO.	SEPT. 15, 1920		
LAST DAYS OF POMPEII		JOHN CHURCH CO.	JULY 15, 1912		
LEAVES FROM MY NOTE BOOK		SAM FOX PUB. CO.	OCT. 9, 1923		
LEGIONAIRES		THEO. PRESSER CO.	JULY 2, 1931		
LIBERTY BELL MARCH		JOHN CHURCH CO.	NOV. 25, 1893		
LIBERTY LOAN MARCH		HARMS INC.	FEB. 28, 1918		
LILY-BELLS	E.S. BARTLETT	JOHN CHURCH CO.	SEPT. 30, 1914		
LION TAMER			APR. 29, 1893		
LITTLE BROWN THRUSH					
LIVELY FLAPPER					
LONELY	JEFFERSON H. NONES	SAM FOX PUB. CO.	1923		
LOOKING UPWARD		J.A. NORTH & CO.	1877		
LOVEY THAT LIVES FOREVER		JOHN CHURCH CO.			
LOVELY MARY DONNELLY	GEO. O. WALLINAM	G. SCHIRMER INC.	MAR. 9, 1918		
LOVE'S RADIANT HOUR	WILLIAM ALLINGHAM	G. SCHIRMER INC.	MAR. 8, 1918		
LOYAL LEGION	HELEN BOARDMAN KNOX	WITMARK & SONS	AUG. 10, 1928		
		CARL FISCHER INC.	MAY 4, 1894		
LOYALTY	ESTELLE CLARK	CARL FISCHER INC.	APR. 21, 1930		
MAGIC GLASS					
MAGNA CHARTA MARCH		THEO. PRESSER CO.	JUNE 22, 1927		
MARE OF THE MEADOW		THEO. PRESSER CO.			
MAIDENS THREE		(HBS)			
MALLIE		JOHN CHURCH CO.	1899		
MAN BEHIND THE GUN					
MANHATTAN BEACH		CHURCH	SEPT. 16, 1893		
MARCH OF THE AMERICAN CAVALRY		SAM FOX			
SEE "SAPRE & SPURS"					
MARCH OF THE MITTEN MEN		THEO. PRESSER CO.	OCT. 15, 1924		
MARCH OF THE PAN AMERICANS		CARL FISCHER	OCT. 7, 1916		
MARCH OF THE STATES		HARMS INC.	MAR. 18, 1916		
MARCH PAST OF THE CONCORAN CADETS		CARL FISCHER INC.	DEC. 31, 1890		
MARCH PAST OF THE NATIONAL FENCIBLES		CARL FISCHER INC.	JUNE 18, 1888		
MARCH SONG OF THE CHICAGO SCHOOLS	GERARD MOULTRIE	THEO. PRESSER CO.	NOV. 28, 1930		
MARCHE DES CADETS - SEE TITLE: HIGH SCHOOL CADETS					
MARCHING SONG OF AMERICA - SEE: WE ARE COMING					
MARCHING SONG OF THE 26TH. REGIMENT	ERNEST W. RIX	CARL FISCHER INC.	AUG. 25, 1928		
MARQUETTE UNIVERSITY MARCH		JOHN CHURCH CO.	DEC. 23, 1924		
MARS AND VENUS		JOHN CHURCH CO.	1904		
MARSCH AUS DEM OCCIDENT - GERMAN TITLE FOR "OCCIDENTAL" - SEE					

FEB. 21, 1923 - JOHN P. SOUSA
AUG. 1, 1924
JOHN P. SOUSA
THREE QUOTATIONS

JAN. 30, 1926
JOHN P. SOUSA

MARCH 1921
JOHN P. SOUSA

MAR. 7, 1921
JOHN P. SOUSA

1933

FEB. 6, 1922
JOHN P. SOUSA

OCT. 15, 1927
JOHN P. SOUSA
MAR. 7, 1921
JOHN PHILIP SOUSA

AUG. 31, 1918
JOHN P. SOUSA
JAN. 19, 1916
JOHN P. SOUSA

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHERS	COPYRIGHT DATE	RENEWED	REMARKS
MATRIMONIAL GUARDS		JOHN CHURCH CO.	1896	SEPT. 8, 1927 JOHN P. SOUSA	
MERRY BROWN THRUSH		THEO. PRESSER CO.			
MERRY MONARCH		COLEMAN			
MESSIAH OF THE NATIONS	JAMES WHITCOMB RILEY	JOHN CHURCH CO.		FEB. 21, 1930 JOHN P. SOUSA	
MIYADO		(MSS)			
MINNESOTA MARCH		SAM FOX PUB. CO.	SEPT. 26, 1927		
MONONGAMELA WALTZ		ELLIS	APR. 10, 1901		
MOONLIGHT ON THE POTOMAC		(COLEMAN) CARL FISCHER	SEPT. 22, 1914		
MOTHER GOSSE		JOHN CHURCH CO.	APR. 3, 1894		
MILKMAID	AUSTIN DOBSON	JOHN CHURCH		FEB. 6, 1922 JOHN P. SOUSA	
MOTHER HUBBARD		(MSS)			
MUSIC OF THE MINUTE		PRESSER			
MY OWN GERALDINE		(MSS)			
MYRRAN GAVOTTE					
MYSTERY OF HISTORY					
SEE! GIRLS WHO HAVE LOVED					
MYSTICAL MISS		THEO. PRESSER	DEC. 21, 1914		
NAIL THE FLAG TO THE MAST		CARL FISCHER INC.	DEC. 29, 1888	JAN. 19, 1916 JOHN P. SOUSA	
NATIONAL FENCIBLES		SAM FOX PUB. CO.	JULY 6, 1925		
NATIONAL GAME		CARL FISCHER INC.	NOV. 22, 1890	AUG. 31, 1918 JOHN P. SOUSA	
NATIONAL PATRIOTIC & TYPICAL AIRS OF ALL LANDS		GLOBUS - VERL.	1914 - 18		
DIE NATIONAL TRUPPE		HARMS INC.	JUNE 28, 1917		
DIE NATIONALSPIEL - GERMAN TITLE FOR "THE NATIONAL GAME" SEE.		ELLIS			
NAVAL RESERVE MARCH		SAM FOX PUBL. CO.	N V. 16, 1928		
NEW CENTURY		HARMS INC.	SEPT. 28, 1915		
NEW MEXICO MARCH		SAM FOX PUB. CO.	MAR. 14, 1923		
NEW YORK HIPPODROME		JOHN CHURCH CO.	AUG. 26, 1920		
NOBLES OF THE MYSTIC SHRINE		G. SCHIRMER INC.	OCT. 12, 1911		
NON-COMMITTAL DECLARATIONS		JOHN CHURCH CO.	JULY 15, 1912		
NORTHERN PINES		CARL FISCHER INC.	JUNE 17, 1894	FEB. 6, 1922 JOHN P. SOUSA	
NYDIA					
NYMPHALIN					
STARS AND STRIPES FOREVER		JOHN CHURCH CO.	1897	APR. 11, 1925 JOHN P. SOUSA	
STAR-SPANGLED (THE) BANNER	JOHN STAFFORD SMITH ARR-JOHN P. SOUSA	G. SCHIRMER INC.	FEB. 27, 1918		
STUDY IN RHYTHMS		MSS			
SUMMER (A) GIRL	TRANS.-CHAS. KUNKEL	JOHN CHURCH CO.	1903	JAN. 13, 1931 CHAS. KUNKEL	
SUMMERTIME SONG (SEE "I'VE MADE MY PLANS FOR THE SUMMER")					
SWEET MISS INDUSTRY		ELLIS			
SWEET HEART I'M WAITING	CHARLES KLEIN	JOHN CHURCH CO.	1896	APR. 30, 1924 JOHN P. SOUSA	EL CAPITAN

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
OCCIDENTAL, THE		CARL FISCHER INC.	MAY 4, 1894	FEB. 6, 1922 JOHN PHILIP SOUSA	
ON SUNLIT SEA BEYOND THE WEST ON, WARRIOR GRIM		THEODORE PRESSER CO. THEODORE PRESSER CO.		MAY 3, 1924 JOHN PHILIP SOUSA EL CAPITAN	
ON, WHY SHOULD THE SPIRIT OF MORTAL BE PROUD		JOHN CHURCH CO.	1899	JAN. 29, 1927 JOHN PHILIP SOUSA	
ON, YE LILIES WHITE ON THE CAMPUS ON PARADE	HELEN SOUSA ABERT	THEODORE PRESSER CO. SAM FOX PUB. CO. CARL FISCHER, INC.	APR. 18, 1921	FEB. 8, 1923 JOHN PHILIP SOUSA	
ON TO VICTORY (SECOND TITLE FOR "FREE LANCE MARCH") ON THE TRAMP		CARL FISCHER INC.		FEB. 8, 1923 JOHN PHILIP SOUSA	
ON THE WINGS OF LIGHTNING ON WITH THE DANCE (MSS) ONLY A DREAM ONLY THEE O'REILLY'S KETTLE DRUM	EDWARD M. TABER	LEE & WALKER ELLIS ELLIS	DEC. 13, 1889	AUG. 18, 1917 JOHN PHILIP SOUSA	
OUR BOYS ARE HOME AGAIN SECOND TITLE FOR: "WHEN THE OUR FLIRTATION		BOYS COME SAILING HOME" CARL FISCHER, INC.	FEB. 20, 1890	NOV. 26, 1917 JOHN PHILIP SOUSA	
OVER THE FOOTLIGHTS OF NEW YORK PAROLES D'AMOUR LA PASTORELLA PATHFINDER OF PANAMA PATIENT EGG PEACHES AND CREAM PEOPLE WHO LIVE IN GLASS HOUSES (MSS) PET OF THE PETTICOATS PHILOSOPHIC MAID		COLEMAN JOHN CHURCH CO. NORDISK MUSIKFORLAG CARL FISCHER, INC. J.W. PEPPER CO. JOHN CHURCH CO.	MAY 22, 1915 JAN. 9, 1925	MAR. 1, 1930 JOHN PHILIP SOUSA "CHARLATAN" AUG. 18, 1917 JOHN PHILIP SOUSA AUG. 1933 JANE VAN M. SOUSA	
PICADORE MARCH		CARL FISCHER, INC.	DEC. 30, 1889		
PIPETOWN SANDY POWER AND GLORY		BOBBS, MERRILL & CO. THEODORE PRESSER CO.	1905		

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POWATTAN'S DAUGHTER		JOHN CHURCH CO.	AUG. 7, 1907	JAN. 10, 1935	
PRESIDENTIAL POLONAISE		CARL FISCHER, INC.	MAR. 1, 1889	JANE VAN M. SOUBA FEB. 17, 1917 JOHN PHILIP SOUBA	
PRICE OF PITTSBURGH		SAM FOX			
PRICE OF THE WOLVERINES, THE		SAM FOX PUB. CO.	OCT. 19, 1926		
PRINCE CHARMING		CARL FISCHER, INC.	NOV. 8, 1928		
PROCESSIONAL-SEE -"WE MARCH, WE MARCH TO VICTORY"		JOHN CHURCH CO.			
PUSHING ON	GUY F. LEE		SEPT. 29, 1918		APPEARED IN CHICAGO TRIBUNE
QUEEN OF THE HARVEST		CARL FISCHER, INC.	DEC. 30, 1889	AUG. 18, 1917 JOHN PHILIP SOUBA	
QUEEN OF HEARTS (MSS)					
RARE OLD FELLOW, A					
RECHTS VORWARTS-GERMAN TITLE FOR "RIGHT FORWARD"					
RED CROSS NURSE		THEODORE PRESSER CO.			
RED MAN, THE		JOHN CHURCH CO.	NOV. 1, 1910		"THE DWELLERS IN THE WESTERN WORLD"
REINE(LA) DE LA MER		JOHN CHURCH CO.	JUNE 27, 1894	FEB. 6, 1922 JOHN CHURCH CO.	
RESUMPTION		COLEMAN			
REVEILLE	ROBERT J. BURDETTE	ELLIS	JAN. 30, 1890	DEC. 31, 1917 JOHN PHILIP SOUBA	
REVERIE, NYMPHALIN		CARL FISCHER INC.	DEC. 28, 1889	AUG. 18, 1917 JOHN PHILIP SOUBA	
REVIEW, THE		ELLIS			
REVIVAL MARCH		COLEMAN	JULY 14, 1894	FEB. 6, 1922 JOHN PHILIP SOUBA	
RIDERS FOR THE FLAG		SAM FOX PUB. CO.	AUG. 12, 1927		
RIFLE REGIMENT, THE		CARL FISCHER, INC.	DEC. 31, 1886	DEC. 12, 1914 JOHN PHILIP SOUBA	
RIGHT FORWARD	ADOLPHE DUMONT	CARL FISCHER, INC.	DEC. 31, 1912		
RIGHT LEFT		CARL FISCHER, INC.			
RIGHT UPON THE FIRING LINE		JOHN CHURCH CO.	1899	MAR. 23, 1927 JOHN PHILIP SOUBA	
ROYAL WELSH FUSILIERS, THE		THEODORE PRESSER CO.	APR. 24, 1930		
RUSSIAN PEASANT DANCE		JOHN CHURCH CO.	1899		"CHARLATAN"
SABRE AND SPURS		SAM FOX PUB. CO.	JULY 6, 1918		
ST. LOUIS EXPOSITION		PEPPER			

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SALUTATION (MSS)					
SALVATION ARMY MARCH		THEODORE PRESSER CO.	APR. 7, 1930		
SANDALPHON (MSS)					
DIE SCHONEN VON CHICAGO GERMAN TITLE FOR "BELLE OF CHICAGO"					
DAS SCHWERE GESCHUTZ GERMAN FOR "THE THUNDERER"					
SEMPER FIDELIS		CARL FISCHER INC.	DEC. 29, 1888	JAN. 19, 1916 JOHN PHILIP SOUSA	
SERENADE IN SEVILLE, A	JAMES FRANCIS COOKE	THEODORE PRESSER CO.	JULY 26, 1924		
SERENADERS, THE		CARL FISCHER	AUG. 28, 1922		"AT THE MOVIES"
SESQUI-CENTENNIAL EXPOSITION MARCH		SAM FOX PUB. CO.	JUNE 18, 1926		
SHERIDAN'S RIDE		JOHN CHURCH CO.	JULY 13, 1908	JAN. 2, 1936 JANE VAN M. SOUSA	
SHOW OFF BEFORE COMPANY (MSS)					
SHOWING OFF BEFORE COMPANY					
SILVER SPRAY SCHOTTISCHE		CARL FISCHER INC.	DEC. 28, 1889	AUG. 18, 1917 JOHN PHILIP SOUSA	
SMICK SMACK SMUCK		W. F. SHAW			
SMUGGLERS, THE		PEPPER			
SNOW BABY		JOHN CHURCH CO.	1897	DEC. 28, 1925 JOHN PHILIP SOUSA	
SOLID MEN TO THE FRONT		G. SCHIRMER, INC.	MAR. 14, 1918		
SONG OF THE SEA		ELLIS			
SOUND OFF		CARL FISCHER, INC.	MAY 4, 1894	FEB. 6, 1922 JOHN PHILIP SOUSA	
SOUSA ALBUM	PRESTON WARE OREM	THEODORE PRESSER CO.	JUNE 4, 1931		
SOUSA FOLIO		JOHN CHURCH CO.	1906	FEB. 1934 JANE VAN M. SOUSA	
SOUSA FOUR HAND ALBUM		THEODORE PRESSER CO.	NOV. 6, 1931		
SOUSA MARCH				FEB. 21, 1930 JOHN PHILIP SOUSA	
SOUSA MARCH AND DANCE ALBUM		JOHN CHURCH CO.	JAN. 28, 1914		
SOUSA MARCH FOLIO		JOHN CHURCH CO.	1902	DEC. 31, 1930 JOHN PHILIP SOUSA	
SOUSA MARCH MEDLEY	MC NAIR ILGENGRITZ	RECORDO PLAYER ROLL CO.	APR. 24, 1922		
SOUSA-PRYOR BAND BOOK	ARTHUR W. PRYOR	J. W. PEPPER & SON	MAY 18, 1910		
SOUSA SONGS		JOHN CHURCH CO.	SEPT. 8, 1910		
SOUSA'S FAVORITE MARCH BOOK	JOHN KRACHTUS	CARL FISCHER, INC.	JUNE 15, 1936		
SOUSA'S GREAT BAND MARCH	THEO. M. TOBANI	CARL FISCHER, INC.	MAR. 28, 1894	FEB. 6, 1922 JOHN PHILIP SOUSA	
SOUSA'S SEN-SEN MARCH		HARRY COLEMAN	1900		

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHERS	COPYRIGHT DATE	RENEWED	REMARKS
TALES OF THE A TRAVELER TALLY-HO		JOHN CHURCH CO. CARL FISCHER INC.	DEC. 27, 1886 ¹⁹¹⁴	FEB. 17, 1914 JOHN P. SOUBA	
DAS TAUSENDSTE MARSCH TE DEUM IN A FLAT THERE'S A MERRY BROWN THRU THREE QUOTATIONS THUNDERER	LUCY LARCOM	THEO. PRESSER CO. JOHN CHURCH CO. CARL FISCHER INC.	JULY 22, 1926 ¹⁸⁹⁶ NOV. 22, 1889	AUG. 15, 1917 JOHN P. SOUBA	
TRANSIT OF VENUS DIE TRUE LEGION SEE! THE LOYAL LEGION TRIUMPH OF TIME		SMALL MAYNARD & CO. CARL FISCHER INC.	APR. 1, 1893	MAR. 7, 1921 JOHN P. SOUBA A	
TROOPING OF THE COLORS		JOHN CHURCH CO.	1896	FEB. 19, 1926 JOHN P. SOUBA	
TURKEY IN THE STRAW TWO FIFTEEN (2115)		G. SCHIRMER INC.	DEC. 8, 1931 DEC. 13, 1889	AUG. 15, 1917 JOHN P. SOUBA	
TYPICAL TUNE OF ZANZIBAR		JOHN CHURCH CO. 1	1896	APR. 30, 1924 JOHN P. SOUBA	
WHITE PLUME MARCH		JOHN CHURCH CO.	JUL. 25, 1884	MAY 11, 1912 JOHN P. SOUBA	
WHITE ROSE MARCH WHO'S WHO IN NAVY BLUE WILL YOU LOVE WHEN THE LILIES ARE DEAD		HARMS INC. JOHN CHURCH CO.	SEPT. 12, 1917 MAY 25, 1920		
WILLOW BLOSSOMS WINDOW BLIND WISCONSIN FORWARD FOREVER WITH PLEASURE WOLVERINES SEE! PRIDE OF THE WOLVERINES		THEO. PRESSER HARMS INC. CHURCH HARMS INC. JOHN CHURCH CO.	AUG. 17, 1916 JUNE 11, 1917 NOV. 16, 1912		
Y.M.I. MARCH YORKTOWN CENTENNIAL MARCH		JOHN CHURCH CO. CARL FISCHER INC.	DEC. 31, 1885	DEC. 13, 1913 JOHN P. SOUBA	
YOU CANNOT TELL HOW OLD THEY ARE BY LOOKING AT THEIR SKIRTS YOU SEE IN ME MY FRIENDS - SEE! EL CAPITAN ZWEI AMERIKANISCHE MARSCH - SEE! SEMPER FIDELIS ZWEI BELICHTE MARSCH - SEE! WASHINGTON POST		JOHN CHURCH CO. FISCHER, BRODIE	JAN. 15, 1923 1928		

LIST OF COMPOSITIONS BY JOHN PHILIP SOUSA COST

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TITLE OF COMPOSITION	COLLABORATOR/S	PUBLISHER	COPYRIGHT DATE	RENEWED	REMARKS
UNCHAIN THE DOGS OF WAR		JOHN CHURCH CO.	1898	JAN. 30, 1926 JOHN PHILIP SOUSA	
UNDER THE AMERICAN FLAG		CARL FISCHER INC.	JULY 16, 1927		
UNDER THE CUBAN FLAG		CARL FISCHER INC.	JULY 16, 1927		
UNDER THE SPANISH FLAG		CARL FISCHER INC.	JULY 16, 1927		
UNDER THE WINDOW HE SOFTLY CREPT (SECOND TITLE FOR TYPICAL TUNE OF ZANZIBAR)					
U. S. FIELD ARTILLERY	ARR: H. L. LAKE	CARL FISCHER INC.	JAN. 22, 1918		
UNIVERSITY OF ILLINOIS MARCH		JOHN CHURCH CO.	AUG. 15, 1929		
UNIVERSITY OF ILLINOIS MARCH		JOHN CHURCH CO.	OCT. 7, 1929		
UNIVERSITY OF NEBRASKA		SAN FOX PUB. CO.	OCT. 4, 1928		
UNSER FLIRT - SEE: OUR FLIRTATION					
UNTER DEM STERNENBANNER					
SEE: STARS & STRIPES FOREVER					
USAAC MARCH	KERNELL & FERNHEIMER ARR: J. P. SOUSA	CHAPPELL & CO., LTD.	DEC. 1, 1919		
VALSE ROMANTIQUE					
SEE: IN LAND OF GOLDEN FLEECE					
VAUTOUR OVERTURE		JOHN CHURCH CO.	1886	FEB. 13, 1914 JOHN PHILIP SOUSA	
VOLUNTEERS		CARL FISCHER INC.	MAY 10, 1918		
WARRIOR GRIM	ARR: DAN GODFREY	JOHN CHURCH CO.	JAN 26, 1920		
WASHINGTON BICENTENNIAL		SAN FOX PUB. CO.	JUNE 7, 1930		
WASHINGTON POST		CARL FISCHER INC.	1889	AUG. 18, 1917 JOHN PHILIP SOUSA	
WE ARE COMING	EDITH WILLIS LINN	G. SCHIRMER, INC.	FEB. 16, 1918		
WE MARCH, WE MARCH TO VICTORY	GERARD MOULTRIE	JOHN CHURCH CO.	MAR. 23, 1915		
WEDDING MARCH		SAN FOX PUB. CO.	OCT. 22, 1918		
WE'RE COMING		G. SCHIRMER, INC.			
WHEN THE BOYS COME SAILING HOME					
SEE: OUR BOYS ARE HOME AGAIN					
BOYS ARE HOME AGAIN	HELEN ALBERT	HAROLD FLAMMER, INC.	DEC. 20, 1918		
WHEN YOU CHANGE YOUR NAME TO MINE		JOHN CHURCH CO.			
WHERE IS LOVE					
WHILE NAVY SHIPS ARE COALING	WELLS HANKS	THEO. PRESSER CO.	FEB. 23, 1923		
WHITE MAN		JOHN CHURCH CO.	APR. 5, 1911		

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[fol. 1373]

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PLAINTIFFS' EXHIBIT 40

This is a list of approximately 275 musical compositions composed by Oley Speaks in collaboration with a number of authors of lyrics. Among his works listed, in which the copyrights date from 1902 to 1934, the following are typical:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Remarks
Eyes of Blue.....	Frank L. Stanton	John Church Co.		12/8/28	O. Speaks/John Church Co.
Go Pretty Rose.....	Mike Beverly/ Anthony Richards	Luckhardt & Belder	1/ 2/24		
In Ciroe's Garden.....	T. R. Sullivan/Al Richards	Luckhardt & Belder NY	12/10/24		
Little One A-Cryin'.....	F. L. Stanton	Theodore Presser Co.	11/ 3/31		
Love's Like A Rosebud.....	C. G. Spross/Arr. F. H. Martens	DeSylva, Brown & Hender- son, Inc.	9/14/28		
Memories.....	T. S. Jones	John Church Co.	8/28/06	1934	Oley Speaks/J. Church Co.
On The Road To Mandalay ..	R. Kipling	John Church Co.	11/18/07		G. Schirmer Inc. 1934
Some Sweet Day	F. Crosby	G. Schirmer Inc.	3/ 6/18		
Sylvia.....	C. Scollard	G. Schirmer NY	7/ 1/14		
Vagabond	R. L. Stevenson	G. Schirmer Inc.	5/ 2/22		

Many of the copyrights have been renewed by Mr. Speaks for an additional twenty-eight years.

PLAINTIFFS' EXHIBIT 41

This lists approximately 150 compositions of Deems Taylor copyrighted between 1909 and 1937. There are a great many collaborators. The list includes such works as "The King's Henchman," composed in collaboration with Edna St. Vincent Millay, published by J. Fisher & Bro. and copyrighted on December 31, 1926; the opera "Peter Ibbetson," composed in collaboration with George Du Maurier and Constance Collier, published by J. Fischer & Bro. and copyrighted on December 20, 1930; "Through the Looking Glass Suite," composed in collaboration with Lewis Carroll, published by J. Fischer & Bro. and copyrighted on October 22, 1923.

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(Here follow 2 photolithographs, side folios 1374-1375)

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AGREEMENT, Made this 1st day of July 1931 between
the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, hereinafter designated
as the "Society," and Malco Brothers

hereinafter designated as "Licensee," as follows:

1. The Society hereby grants to the licensee the license to publicly perform the musical numbers of the repertoire of the Society for the period of one (1) year, beginning for the season of 1931 day of 19, on the premises known as No. Peony Park

City of Douglas, State of Nebraska, and not elsewhere.

2. The licensee hereby accepts such license and agrees to pay the Society the sum of Thirty

no/00 Dollars annually, payable in one equal installments
Dollars in advance on the 1st day of

July hereafter during the term of this Agreement

3. This license is not transferable. It is strictly limited to the licensee herein named and to the premises hereinabove mentioned; and it is further strictly limited to non-dramatic renditions.

4. The Society reserves the right at any time to revoke the privilege of the licensee to perform any specific number or numbers, in its repertoire, upon giving to the licensee notice in writing of such revocation. Such notice may be given to the licensee either personally or may be sent to the licensee by registered United States mail, postage prepaid, to the address above mentioned; and, upon the mailing of such notice of revocation the receipt by licensee of such notice personally delivered to the licensee, the licensee shall not thereafter be privileged to perform such specific number, or numbers. Upon such revocation being made, the licensee shall have the right to terminate this agreement forthwith by written notice sent to the Society by registered United States mail, postage prepaid, addressed to its Chicago office.

Either party to this agreement may terminate the same at the end of any calendar month upon giving to the other of said parties thirty (30) days prior notice in writing. Such notice shall be forwarded by registered United States mail.

Upon the termination of this agreement for either of the causes in this paragraph "4" mentioned, any advance payments of unearned license fees shall be proportionately rebated to the licensee.

5. In event licensee shall violate any of the terms or conditions of this agreement, or make default in the payment of any of said installments at the time and place, and in the manner, as is above provided, then the Society may, at its election, at any time after such default, without previous notice of such election to the licensee, terminate this agreement; and, upon such termination being so made, this license and the rights and privileges herein granted to the licensee shall immediately cease and determine.

6. The parties hereto hereby agree that this agreement shall be deemed to be, and the same shall be, extended and renewed from year to year unless either party, on or before thirty (30) days next preceding the termination of any year, shall give notice to the other of the desire of such party so giving such notice to terminate the same at the conclusion of such year. Such notice shall be given in writing and forwarded by registered United States mail.

IN WITNESS WHEREOF, This agreement has been duly subscribed and sealed by the Society and licensee.

In presence of:

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, (SEAL)

By Engelhardt Blaylock
Its Duly Authorized Agent and Attorney in Fact.

Malco Bros (SEAL)

AGREEMENT, Made this 20th day of April, 1922, between
 the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, hereinafter designated
 as the "Society," and Peony Park of
Anaconda, Mont.
 hereinafter designated as "Licensee," as follows:

1. The Society hereby grants to the licensee the license to publicly perform the musical numbers of the repertoire of the Society for the period of one (1) year, commencing on the Twentieth (20) day of April 1922, on the premises known as No. Peony Park City of Anaconda, State of Montana, and not elsewhere.
2. The licensee hereby accepts such license and agrees to pay the Society the sum of fifty (\$50) Dollars annually, payable in one equal installments fifty and \$100 Dollars in advance on the 20th day of April, each year hereafter during the continuance of this agreement.
3. This license is not transferable. It is strictly limited to the licensee herein named and to the premises hereinabove mentioned; and it is further strictly limited to non-dramatic renditions.

4. The Society reserves the right at any time to revoke the privilege of the licensee to perform any specific number or numbers, in its repertoire, upon giving to the licensee notice in writing of such revocation. Such notice may be given to the licensee either personally or may be sent to the licensee by registered United States mail, postage prepaid, to the address above mentioned; and, upon the mailing of such notice of revocation, or the receipt by licensee of such notice personally delivered to the licensee, the licensee shall not thereafter be privileged to perform such specific number, or numbers. Upon such revocation being made, the licensee shall have the right to terminate this agreement forthwith by written notice sent to the Society by registered United States mail, postage prepaid, addressed to its Chicago office.

Either party to this agreement may terminate the same at the end of any calendar month upon giving to the other of said parties thirty (30) days prior notice in writing. Such notice shall be forwarded by registered United States mail.

Upon the termination of this agreement for either of the causes in this paragraph "4" mentioned, any advance payments of unearned license fees shall be proportionately rebated to the licensee.

5. In event licensee shall violate any of the terms or conditions of this agreement, or make default in the payment of any of said installments at the time and place, and in the manner, as is above provided, then the Society may, at its election, at any time after such default, without previous notice of such election to the licensee, terminate this agreement; and, upon such termination being so made, this license and the rights and privileges herein granted to the licensee shall immediately cease and determine.

6. The parties hereto hereby agree that this agreement shall be deemed to be, and the same shall be, extended and renewed from year to year unless either party, on or before thirty (30) days next preceding the termination of any year, shall give notice to the other of the desire of such party so giving such notice to terminate the same at the conclusion of such year. Such notice shall be given in writing and forwarded by registered United States mail.

IN WITNESS WHEREOF, This agreement has been duly subscribed and sealed by the Society and Licensee.

In presence of:

K. L. Berry

AMERICAN SOCIETY OF COMPOSERS,
 AUTHORS AND PUBLISHERS, (SEAL)

By Eugene H. Blayser
 Its Duly Authorized Agent and Attorney in Fact.

1375 77th Bridge

Peony Park (SEAL)
Joseph Malles (SEAL)

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[fol. 1376]

PLAINTIFFS' EXHIBIT 44

Amusement Protective Association of Nebraska

301 South 31st Street, Omaha, Nebraska

Matt Kobalter, Director, Lincoln.
Joseph W. Smith, Director, Hastings.
Bert Glover, Director, Grand Island.
Joseph Malec, President, Omaha.
H. H. King, Vice Pres., Norfolk.
H. A. Marble, Sec'y, Y Treas., Omaha.
William Barclay, Dir., Plattsmouth.
George Sharpnach, Dir., Lincoln.
Roy F. Gordon, Dir., Bennington.

March 13th, 1937.

DEAR SIR:

At a meeting of more than twenty-five representative ball-room operators held at the Fontanelle Hotel Wednesday, March 11th, this organization was formed for the protection of all operators in regard to state legislation or any forces which might take unfair advantage of us. The men listed above were chosen as officers of the organization.

Our first big problem is the promotion of the bill 478, which will protect us against the payment of the so-called license to play copyrighted music at public performances for profit. We have been forced to pay the American Society of Composers, Authors and Publishers long enough and we believe that if we all do our part, we will be able to keep this graft out of the state of Nebraska.

In order to aid in passing the Legislation Roll No. 478 which is of vital interest to us all, we are making the following suggestions:

1. Get in touch with the legislator from your district That You Know and explain to him how the monopoly created by the American Society of Composers, Authors and Publishers has unfairly collected from You and other operators year after year. Explain to him that you are vitally concerned with this legislation. Do not write or talk to any of the legislators that you do not know, as too many letters or calls from strangers will only agitate them.

2. Attend the next meeting of the Amusement Protective Association of Nebraska to be held at Lincoln, Nebraska, at 10 a. m. Wednesday, March 17th, at the Lincoln Hotel. The bill will be completely discussed at the meeting, after which the operators will retire in a body to the committee meeting where the actual legislation will come up. It Is Vitally Important That You or a Representative Be Present as every effort we can give will be necessary to show this committee that every dance hall operator is interested in this protective measure.

3. So that you might be familiar with the proposed legislation, read over the enclosed sheet before you contact your legislator and before you attend the meeting at Lincoln.

4. Thanking you in behalf of the newly formed organization, and trusting that we may count on seeing you at Lincoln on Wednesday to help us put this big job over, we are,

Sincerely yours, Amusement Protective Ass'n of
Nebr., (Signed) By H. A. Marble, Sec'y.

(Copy.)

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NEBRASKA—Continued

GRAND ISLAND—Continued
K M J—Continued

Mechanical Program Equipment
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
Personnel—Ready Men.
Representation—
Howard H. Wilson Company.

KEARNEY

(Buffalo Co. 253)

K G F W

Rates effective May 1, 1939.
Owned and operated by Central Nebraska Broadcasting Corporation, 215 South Central Ave., Kearney, Nebraska, telephone B1M31.
Transmitter—South Central Ave., Kearney, Nebraska.
Waco—Power—Time
Operating power—250 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
Announcement—Cash discount.
Agency commission 15% to recognized agencies on net charge for station time. No commission on take-out and remote charges. Cash discount of 25% allowed on cash in advance. Bills are due and payable when rendered.
General Advertising
1 hour... 10.00
1/2 hour... 5.00
1/4 hour... 2.50
100 words... 1.00
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Time Signals, Weather and Temperature Reports.
Rates on request.
Additional charge made for programs originating outside of station and for programs requiring special production.
SERVICE FACILITIES
Services of program department, staff announcers and engineers in arranging and producing programs included without charge.
Contract accepted for more than one year of service.
Rates subject to change upon thirty days' written notice. If contract is not renewed, station and future rates and program regulations. All contracts subject to approval by station management.
All programs subject to approval by station management.

MECHANICAL PROGRAM EQUIPMENT
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
Personnel—Walter M. Ely.
Owner—Walter M. Ely.
Representation—W. J. Binkler.
Transmitter—Waco—Power—Time
Operating power—10.00 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
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LINCOLN
(Lincoln County)
K F A B
(Established 1934)

Rates card updated; received April 17, 1939. (Card No. 4-39.)
Owned by KFAB Broadcasting Company.
Owned by Central States Broadcasting System, Inc., Omaha, Nebraska.
Main Station—Omaha, Nebraska.
Transmitter—Omaha, Nebraska.
Waco—Power—Time
Operating power—10.00 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
Announcement—Cash discount.
Agency commission 15% to recognized agencies on net charge for station time. No cash discount on take-out and remote charges. Bills are due and payable when rendered.
General Advertising
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MECHANICAL PROGRAM EQUIPMENT
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
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NEBRASKA—Continued

GRAND ISLAND—Continued
K M J—Continued

Mechanical Program Equipment
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
Personnel—Ready Men.
Representation—
Howard H. Wilson Company.

KEARNEY

(Buffalo Co. 253)

K G F W

Rates effective May 1, 1939.
Owned and operated by Central Nebraska Broadcasting Corporation, 215 South Central Ave., Kearney, Nebraska, telephone B1M31.
Transmitter—South Central Ave., Kearney, Nebraska.
Waco—Power—Time
Operating power—250 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
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98.00
99.00
100.00

Time Signals, Weather and Temperature Reports.
Rates on request.
Additional charge made for programs originating outside of station and for programs requiring special production.
SERVICE FACILITIES
Services of program department, staff announcers and engineers in arranging and producing programs included without charge.
Contract accepted for more than one year of service.
Rates subject to change upon thirty days' written notice. If contract is not renewed, station and future rates and program regulations. All contracts subject to approval by station management.
All programs subject to approval by station management.

MECHANICAL PROGRAM EQUIPMENT
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
Personnel—Walter M. Ely.
Owner—Walter M. Ely.
Representation—W. J. Binkler.
Transmitter—Waco—Power—Time
Operating power—10.00 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
Announcement—Cash discount.
Agency commission 15% to recognized agencies on net charge for station time. No cash discount on take-out and remote charges. Bills are due and payable when rendered.
General Advertising
1 hour... 10.00
1/2 hour... 5.00
1/4 hour... 2.50
100 words... 1.00
13.00
14.00
15.00
16.00
17.00
18.00
19.00
20.00
21.00
22.00
23.00
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99.00
100.00

LINCOLN
(Lincoln County)
K F A B
(Established 1934)

Rates card updated; received April 17, 1939. (Card No. 4-39.)
Owned by KFAB Broadcasting Company.
Owned by Central States Broadcasting System, Inc., Omaha, Nebraska.
Main Station—Omaha, Nebraska.
Transmitter—Omaha, Nebraska.
Waco—Power—Time
Operating power—10.00 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
Announcement—Cash discount.
Agency commission 15% to recognized agencies on net charge for station time. No cash discount on take-out and remote charges. Bills are due and payable when rendered.
General Advertising
1 hour... 10.00
1/2 hour... 5.00
1/4 hour... 2.50
100 words... 1.00
13.00
14.00
15.00
16.00
17.00
18.00
19.00
20.00
21.00
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93.00
94.00
95.00
96.00
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99.00
100.00

MECHANICAL PROGRAM EQUIPMENT
Equipped to handle programs by electrical transcription, using 25-1/3 and 78 r.p.m. double turn-tables.
Personnel—Walter M. Ely.
Owner—Walter M. Ely.
Representation—W. J. Binkler.
Transmitter—Waco—Power—Time
Operating power—10.00 watts.
(100% modulation—crystal control.)
228.5 meters; 1,310 kilocycles.
Licensed to operate unlimited time. Daylight hours time not observed.
Actual operating schedule: 6:00 a.m. to 10:30 p.m.
Announcement—Cash discount.
Agency commission 15% to recognized agencies on net charge for station time. No cash discount on take-out and remote charges. Bills are due and payable when rendered.
General Advertising
1 hour... 10.00
1/2 hour... 5.00
1/4 hour... 2.50
100 words... 1.00
13.00
14.00
15.00
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100.00

NEBRASKA—Continued

OMAHA—Continued

K O W H
(Established 1921)

Rates effective May 1, 1939. (Card No. 1.)

Owned and operated by Omaha World-Herald.
Business Office and Studio—World-Herald Building,
Omaha, Nebraska. Telephone AT 2233.
Transmitter—4th and Girard Streets, Omaha, Neb.

Week-End—Time

Operating power—500 watts.
14.1 meters; 400 kilocycles.
Announcements—
A.M. Week days 6:30 a.m. to 7:30 a.m. 100 words 1.00
Sundays 8:00 a.m. to 9:30 a.m. 100 words 1.00
January 7:30 a.m. to 9:30 a.m. 100 words 1.00
February 7:30 a.m. to 9:30 a.m. 100 words 1.00
March 7:30 a.m. to 9:30 a.m. 100 words 1.00
April 7:30 a.m. to 9:30 a.m. 100 words 1.00
May 7:30 a.m. to 9:30 a.m. 100 words 1.00
June 7:30 a.m. to 9:30 a.m. 100 words 1.00

Commission and Cash Discount
Agency commission 15% to recognized advertising agencies. Balance in cash. No cash discount. Advance payment and payable when rendered.

The following rates are for both local and national advertising.
Retractive discount allowed on continuous time actually used. Contracts cancelled before completion become payable at 13 2/3% discount on the short rate.

Time	100 words	150 words	200 words
1 hour—	1.00	1.50	2.00
1/2 hour—	.60	.90	1.20
1/4 hour—	.30	.45	.60
5 minutes—	.15	.22	.30
3 minutes—	.08	.12	.16
2 minutes—	.05	.08	.10
1 minute—	.03	.04	.05
One minute or less—	.02	.03	.04

Applicable to programs of five minutes or longer. If a program of less than five minutes is used, the weekly rate of five times weekly takes a weekly rate of four and one half times the daily rate. The above based on total times ordered.

For rates covering label retail merchants only. Weather report, temperature reports, time signals, census station management.

ELECTRICAL TRANSCRIPTION

Transcription library services available—rates on request.

Talent

Talent and special announcements are supplied at actual cost.

REMOTE CONTROL

Program originating outside of station or requiring special production are subject to additional charge.

SERVICE FACILITIES

Services of the program and continuity departments and other facilities are provided without extra charge. Merchandising service available on cooperative basis.

Contract and Other Requirements

Contracts limited to one year.
All contracts subject to present and future state and federal legislation. Station reserves the right to discontinue or refuse any advertising program for reasons satisfactory to itself except in cases governed by federal regulations.

Immediate Program

Equipped to handle programs by electrical transcription. Rates—
1 hour—1.00
1/2 hour—.60
1/4 hour—.30
5 minutes—.15
3 minutes—.08
2 minutes—.05
1 minute—.03
One minute or less—.02

Manager—Yermon H. "Big" Smith.
Assistant Manager—Frank Shapiro.
Sales Manager—Clement W. Young.
Representative—
George F. Halliway Company.

W O W

(Established 1921)

Rates effective March 15, 1939. (Card No. 2.)

Owned and operated by Workmen of the World Life Insurance Society.
Business Office and Studio—170 and Persimmon Streets,
Omaha, Nebraska. Telephone WE 2424.
Transmitter—7th and Kansas Streets, Omaha, Neb.

Operating power—1,000 watts (day); 1,000 watts (night).
14.1 meters; 400 kilocycles.
Announcements—
A.M. Week days 6:30 a.m. to 7:30 a.m. 100 words 1.00
Sundays 8:00 a.m. to 9:30 a.m. 100 words 1.00

Commission and Cash Discount
Agency commission 15% to recognized advertising agencies. Balance in cash. No cash discount. Advance payment and payable when rendered.

The following rates are for both local and national advertising.
Retractive discount allowed on continuous time actually used. Contracts cancelled before completion become payable at 13 2/3% discount on the short rate.

Time	100 words	150 words	200 words
1 hour—	1.00	1.50	2.00
1/2 hour—	.60	.90	1.20
1/4 hour—	.30	.45	.60
5 minutes—	.15	.22	.30
3 minutes—	.08	.12	.16
2 minutes—	.05	.08	.10
1 minute—	.03	.04	.05
One minute or less—	.02	.03	.04

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

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1/4 hour—.30

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2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

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1/4 hour—.30

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2 minutes—.05

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One minute or less—.02

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1/4 hour—.30

5 minutes—.15

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2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

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One minute or less—.02

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One minute or less—.02

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1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

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One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

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5 minutes—.15

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One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

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1/4 hour—.30

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3 minutes—.08

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One minute or less—.02

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One minute or less—.02

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1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

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1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

3 minutes—.08

2 minutes—.05

1 minute—.03

One minute or less—.02

(6:30 a.m. to 6:50 p.m.)

1 hour—1.00

1/2 hour—.60

1/4 hour—.30

5 minutes—.15

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[fol. 1381] PLAINTIFF'S Ex. No. 53 (2 Sheets).

G. L. Harman

May 12, 1939.

Eppley Hotels Company, 1804 Dodge Street, Omaha, Nebraska.

GENTLEMEN:

The writer spoke to Miss Hedlin a few days ago, who told him she thought that the Hotel Capitol at Lincoln had discontinued the use of music. The writer was in Lincoln yesterday and at the hotel noted that there was an advertisement of music. He spoke to the manager, who told him that music had been used and was being used but that the same would be immediately discontinued. We sent notices to the Hotel Capitol at Lincoln, the last being sent by registered mail on March 31, 1939, and we have the return receipt therefor.

The Hotel Room at Omaha also does not have a license from this Society to perform the copyrighted works of its members publicly for profit. We have taken up the matter a number of times with your office and have been unable to elicit a response.

Miss Hedlin told the writer just a few days ago she thought the rate on the Fontenelle Hotel was too high or that it ought to include the Rome Hotel. We advised Miss Hedlin, as we have advised your company a number of times, that every contract we write is on a particular establishment; that if your company thinks that any rate is too high you may take up directly with the Society the matter of the negotiation of a lower rate. The writer does not attempt to write contracts with Hotels, but the matter of contracts with hotels is dealt directly with by the Society. He has even sent in forms to be used and suggested the taking up of the matter directly with the Society.

In any event, the contract which you have on the Fontenelle does not include the Capitol Hotel at Lincoln nor the Rome Hotel at Omaha. Registered notices have been sent to both of these establishments. We of course do not know whether or not the copyrighted works of the members of this Society have been performed in either one of these hotels and we cannot state whether or not you need a con-

tract from this Society, but in any event you do not have [fol. 1382] contracts to publicly perform for profit the copyrighted works of its members in these hotels.

Miss Hedlin told the writer a few days ago she was taking the matter up directly with Mr. Hotz. The writer has taken up the matter with Mr. Hotz but we have never been able to consummate any written agreement. We are sending a copy of this letter to Mr. Hotz and beg to advise you that unless a written agreement is entered into between the Society and yourself wherein the right to publicly perform the copyrighted works of the members of this Society is granted to you, you have and shall have no right, express or implied, to publicly perform for profit such copyrighted music.

Very truly yours, — —. EMB:MD. cc Mr.
W. O. Hotz.

PLAINTIFFS' EXHIBIT 62

861

Schedule of Suits Instituted in the State of Nebraska		Disposition of Action and Remarks	
Establishment	Location	Title of Action	
Actions Instituted in 1926			
American Theatre.....	Kimball	Irving Berlin, Inc. vs. Marie Goodhand	Settled for \$39.68 and license
Columbia Theatre.....	Omaha	Irving Berlin, Inc. vs. Frank J. Hirs & Anna Hirs	Settled for \$65.00 and license
Crystal Theatre.....	Peru	Irving Berlin, Inc. vs. Fay Whitfield	Service of subpoena never made, defendant dying prior to service thereof
Kelpine Dancing Academy.....	Omaha	Jerome H. Remick & Co. vs. Wm. E. Kaufman	Settled for \$50.00 and license
Liberty Theatre.....	Weeping Water	Buck vs. G. H. Dennis	Settled for \$54.80 and license
Pace Theatre.....	Chadron	Leo Feist, Inc. vs. James W. Pace	Settled for \$90.00 and licenses
Palm Theatre.....	Ashland	Irving Berlin, Inc. vs. F. B. Honey	Settled for \$118.00 and license
Pastime Theatre.....	Ravenna	Leo Feist, Inc. vs. A. Gehrke and Gus Holub	Settled for \$55.00 and license
Royal Theatre.....	Wisner	Villa Moret, Inc. vs. M. E. Schrieber	Settled for \$63.70 and license
Actions Instituted in 1925			
Blue Bird Party House.....	Lincoln	Irving Berlin, Inc. vs. Clarence E. Green	Settled for \$75.00 and license
Actions Instituted in 1927			
Electric Theatre.....	Cambridge	Harms, Inc. vs. E. J. Sherburne	Settled for \$75.00 and license
Favorite Theatre.....	Schuyler	Buck & J. H. Remick & Co. vs. Oliver Van Housen	Settled for \$50.00, and \$20.70 court and costs license
Hastings Amusement Park.....	Hastings	Ager, Yellen & Bornstein vs. Lib Phillips	Settled for \$75.00 and license
King's Park.....	Norfolk	Leo Feist, Inc. vs. Harry King	Settled for \$60.00 and license
Pier Dance Pavilion.....	Grand Island	Buck vs. Sylvester T. Scott	Settled for \$75.00 and license
Princess Theatre.....	Ogallala	Irving Berlin, Inc. vs. A. F. Kehr	Settled for \$100.00 and license
Radio Station KGBZ.....	York	Leo Feist, Inc. vs. George R. Miller	Settled for \$30.00 and license

Schedule of Suits Instituted in Nebraska—Continued

Establishment	Location	Title of Action	Disposition of Action and Remarks
Carnation Inn.....	Millard	Actions Instituted in 1928 Leo Feist, Inc. vs. Lottis Perring, Orville A. Perring and Ralph Evers	Motion to dismiss filed by defendants. Overruled, given leave to answer. No answer filed. Defendant Lottis Perring afterward committed to some institution and finally heard she was in County Poor Farm. Upon this advice per stipulation we dismissed the case
Electric Theatre.....	Falls City	Jerome H. Remick & Co. vs. J. F. Mullen	Settled for \$100.00 and license
Peters Auditorium.....	Millard	Buck vs. C. W. Peters	Settled for \$100.00 and license
[fol. 1386]			
Thelma Theatre.....	Pender	Harms, Inc. vs. M. C. Freed and Marie Freed	Settled for \$54.10 and license
Paramount Theatre.....	Exeter	Irving Berlin, Inc. vs. Lester P. Ryan and L. E. Morris	Default decree entered 3/18/29, \$500 plus \$100 attorneys fees and \$39.73 costs. Uncollected, whereabouts of defendants unknown
Platt Island.....	Madison	Shapiro, Bernstein & Co. Inc. vs. J. A. Platt	Settled for \$125.00 and license
	Omaha	Buck vs. Hartsock	Settled for \$20.00
Auditorium Theatre.....	Osceola	Actions Instituted in 1929 Buck vs. Lloyd Timm	Settled for \$63.92 and license
Belle Isle Pavilion.....	Syracuse	Buck vs. C. W. Gardner	Default decree October, 1929, \$750.00, \$100.00 attorneys fees and costs. Def. has disappeared
Jones Pavilion.....	Crystal Lake	Buck vs. Clint Strawn	Defendant filed general denial except an admission he operated pavilion. Case set several times for hearing but because of inability of court to hear it, absence, or other causes, it was not heard. Def. in meantime gave up operation of business and on check of investigators were unable to remember compositions, and therefore dismissed by stipulation

Merryland Party House.....	Omaha
Nebraska Hidden Paradise.....	Long Pine
Radio Inn.....	Omaha
Radio Station KFOR.....	Lincoln
Royal Theatre.....	Ponca
Strand Theatre.....	Minden
West Center Park Pavilion.....	Omaha
[fol. 1388]	
Auditorium Dance Hall.....	Elkhorn
Auditorium Theatre.....	Beaver City
Farmer's Pavilion.....	Cuming County
Ideal Theatre.....	Lyman
Island Theatre.....	Grand Island
Jan-Mar Theatre.....	Howells
Lyric Theatre.....	Atkinson
Old Mill.....	Leroy
Olivecrest.....	Omaha
Queen Theatre.....	Omaha
Star Pavilion.....	West Point

Buck vs. Gust Coschka, Tom Erea and Alex Morar	Settled for \$30.00 and license
Buck vs. Harry M. Culbertson	Default decree Dec. 1929, \$250, attorneys fees and costs. Defendant is execution proof No service obtained. Establishment closed and in 1931 suit dismissed by plaintiffs without prejudice
Buck vs. Chawncney A. Barnbrook	Settled for \$50.00 and license, together with \$100 back license fees
Buck vs. Howard A. Shuman and Harry A. Shuman	Settled for \$60.00 and license
Buck vs. S. N. Andress	Defendant filed answer admitting he was the owner and general denial as to each other allegation. Plaintiff moved to strike it, which was sustained. Decree entered into by stipulation providing if def. should pay \$100 on or before 10/16/30 decree should be satisfied. \$100 never paid and def. has disappeared, his whereabouts are unknown
Buck vs. Oscar W. Persons	Settled for \$50.00 and license
Buck vs. John Hofeldt	
Actions Instituted in 1930	
Buck vs. Parkening and Davis	Settled for \$75.00 and license
Buck vs. M. C. Shafer	Settled for \$225.00 and license
Buck vs. Constant Rief	Settled for \$100.00 and license
Buck vs. G. A. Parberry	Default decree entered on 11/13/33, \$500.00, \$50.00 attorney's fees and costs. Defendant execution proof.
Buck vs. Island Theatre Corporation	Settled for \$100.00. Defendant sold theatre and licensed with new exhibitor.
Buck vs. Janata and Frank Marek	Settled for \$75.00 and license
Buck vs. A. G. Miller	Decree 4/24/30, \$250.00 damages, \$100.00 attorney's fees and costs. Defendant finally paid \$80.00 and we dismissed the case.
Buck vs. Carl J. Hempel	Settled for \$100.00 and license
Buck vs. Kai Lauritzen	Settled for \$33.70 and license
Buck vs. Anton Delizai	Settled for \$57.00 and license
Buck vs. Frank Fiese	Settled for \$75.00 and license

Schedule of Suits Instituted in Nebraska—Continued

Establishment	Location	Title of Action	Disposition of Action and Remarks
[fol. 1389]			
Bon Ton Night Club.....	Omaha	Actions Instituted in 1931	Settled for \$37.50 and license
Dance Garden.....	Atkinson	Buck vs. Loyd & McGuigan Buck vs. Fred J. Jungman	Dismissed by plaintiff
McDonald's Pavilion.....	Gering	Actions Instituted in 1932	Decree 11/13/33, for \$500.00, \$50.00 attorney's fees & costs
Riviera Theatre.....	Gering	Buck vs. Vernon McDonald	Decree 11/13/33, for \$500.00, \$50.00 attorney's fees & costs
Radio Station KFOR.....	Lincoln	Buck vs. George W. Luce Buck vs. Shuman, Jr., et al.	Settled for back license fees and costs
Clover Leaf Club.....	Omaha	Actions Instituted in 1933	Settled for costs amounting to \$78.75 & license
Essaness Theatre.....	Rushville	Buck vs. Hart & Yousem	Settled for \$58.40 and costs
Lafayette Club.....	Omaha	Buck vs. McParland Buck vs. Martin J. Dineen and Thomas P. Dineen	While suit was pending defendant became bankrupt
Nebraska State Fair Walkathon..	Lancaster County	Buck vs. G. E. Lewis, et al.	Settled for \$69.60 and license
Radio Station KFOR.....	Lincoln	Buck vs. Howard A. Shuman and Harry A. Shuman	Settled for \$50.00 and license, together with \$100 back license fees
Rivoli Theatre and Electric Theatre	Falls City	Buck vs. Falls City Amusement Co. Inc.	Settled for court costs, back license fees and new contracts
[fol. 1390]			
Roxy Theatre.....	Hemingford	Buck vs. H. C. Drury	Settled for \$60.00 and license
Trail Theatre.....	Bridgeport	Buck vs. Ross Lebart	Settled for \$70.00 costs and license
Vagabond Nite Club.....	Omaha	Buck vs. George Vercruyse	Settled for \$150.00 and license
Bizzarri Inn.....	Omaha	Actions Instituted in 1934	Settled for \$24.35 and license
Coney Island.....	Lincoln	Buck vs. D. Bizzarri	Settled for \$80.00 and license
Edelweiss Gardens.....	Omaha	Buck vs. Elstun and Pappas Buck vs. Hanfeldt, Sand and Christensen	Settled for \$43.15 and license
Honeymoon Inn.....	Omaha	Buck vs. Catino and Maddalena	Settled for new contract and costs amounting to \$25, \$14.40 of which was received. Advised in May 1938 that the debtor was N.G.

Judgment entered as to Ike Pane and suit dismissed as to Frank Pane. Decree \$500 and costs; defendant execution proof
 Settled for \$29.00 and license
 Settled for \$60.00 and license
 Settled for \$25.00 and license
 Settled for \$28.50 and license
 Decree secured 1/13/36, \$500, attorneys fees and costs. Judgment debtor has disappeared
 Settled for \$35.00 and license
 Decree secured 1/13/36. Advised in May, 1938 debtor's whereabouts unknown, nothing to levy on
 Settled for \$200.00 and license
 Secured judgment which was satisfied and took chattel mortgage on equipment, which judgment debtor sold. Defendant paid \$140 and we released lien
 Settled for \$36.00 and license
 Action pending; defendant is judgment proof
 Settled for \$100.00 and license
 Settled for \$80.00
 Decree secured 9/16/36 allowing \$1,500 & costs. Corporation defunct, no assets
 Settled for \$25.00 and license; suit dismissed
 Action pending
 Judgment secured in amount of \$250 & costs. Agreed to settle with defendant for costs and back license fees. Defendant finally paid a total of \$149.30, of which \$49.30 was for court costs and investigating expense and \$100 for back license fees

Buck vs. Frank Pane & Ike Pane

Buck vs. N. Sankovich
 Buck vs. M. Hawkins
 Buck vs. Small

Buck vs. John Holman
 Buck vs. Osland and LaHue

Buck vs. Harry H. Benedict
 Actions Instituted in 1935
 Buck vs. B. J. Knowles

Buck vs. Volker & Hutter
 Buck vs. Gust Coschka

Buck vs. Harry E. Isard
 Buck vs. Nelson D. Kelso
 Buck vs. Olen E. and David Perry

Buck vs. A. G. Miller
 Buck vs. Marigold Club Inc.

Buck vs. Hedges
 Buck vs. C. D. Stratton
 Actions Instituted in 1936
 Buck vs. O. R. Bennett

Ike's Place..... Omaha

Jubilee Tavern..... Omaha
 The Oasis..... Omaha
 Princess Theatre..... Decatur
 [fol. 1391]
 Club Reno..... Omaha
 State Theatre..... Central City

Wine and Dine..... Omaha

Club Beer Parlor..... Grand Island

Clover Leaf Club..... Omaha
 Farmers & Truckers Inn..... Omaha

JB Cavern..... Omaha
 Kelso Pavilion..... Chadron
 Lighthouse..... Omaha
 [fol. 1392]
 Lyric Theatre..... Atkinson
 Marigold Club..... Lincoln

Mug House Grotto..... Omaha
 Stratton Hotel..... Grand Island

Auburn Theatre..... Auburn

Schedule of Suits Instituted in Nebraska—Continued

Establishment	Location	Title of Action	Disposition of Action and Remarks
Bert Hiatt's Modern Nite Club	Sarpy County	Actions Instituted in 1936—Continued	Settled for \$35.00 and license. Settled for \$40.00 and license. Secured decree in amount of \$500 and attorney's fees. Defendant execution proof.
Capitol Bar	Omaha		
JB Cavern	Omaha		
[fol. 1393]			
Northern Star	Nashville	Buck vs. Prochnow, Rix and Jorgensen	Default decree entered as to Rix only, other defendants having answered they had no interest in establishment at date of infringement; cause dismissed as to them.
Peony Park	Omaha	Buck vs. Peony Park Corp.	Original contract reinstated
Pier, The	Grand Island	Buck vs. Sylvester T. Scott, Jr.	Decree & findings of fact entered 1/11/37. Establishment closed. Defendant is without funds
Riverview Inn	Columbus	Buck vs. Anna Heitkam	Settled for \$35.00
Roxy Club	Omaha	Buck vs. DePrez & Haddad	Decree secured in amount of \$500, attorney's fees and costs. Judgment debtor disappeared
Shady Lake Inn	Columbus	Buck vs. George Petros	Settled for \$60.00 and contract submitted. Suit dismissed
Waller's Park	Aurora	Buck vs. Lowell M. Andrew	Never got service on defendant. Court dismissed case, sending refund
Peony Park	Omaha	Actions Instituted in 1937	Original contract reinstated
[fol. 1394]		Buck vs. Peony Park Corp.	
Clover Leaf Club	Omaha	Actions Instituted in 1938	Settled for court costs in the amount of \$23.30 and license. Settled for \$17.75 and license. Settled for \$46.00 and license. Action pending
Skyline Lodge	Elkhorn	Buck vs. Fred Barnes	
Wagon Wheel	Nebraska City	Buck vs. Dell Dean	
Pleasure Isle	Dannebreg	Buck vs. Frank Schey	
		Actions Instituted in 1939	
		Buck vs. A. H. Norgard	

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MEMORANDUM OF AGREEMENT made this 30th day of April

POWER OF THE KING IS TO BE OBTAINED

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(hereinafter called the Licensee), and Society of European Space Authors and Composers, Inc., a New York Corporation (hereinafter called the Licensee), with its principal office located at 113 West 42nd Street, New York, N.Y.

The LEXICON has entered into various agreements covering small and/or grand rights with certain Foreign and American Publishers, viz.: VERLAGSWERKE DES VERBANDES DEUTSCHER BUCHVEREINIGUNGS UND BUCHHÄNDLERVEREINS, Berlin; "SALVATRAGRA" MOYER VERLAG, H. HANSEN HILGARD, Berlin; ALEX U. STRAUSS, BUCHVERLAG, Berlin; ALBANO THEATRALVERLAG, Berlin; MAX BECK VERLAG, Leipzig; BEYRAT MOYER Co., New York; EMMER EULENBERG, Leipzig; S. FRIEDMAN VERLAG, Berlin; ROL. FRIEDMAN, Leipzig; PAUL GEMMER, BUCHVEREINIGUNG, Berlin; HANSEN-VERLAG, Berlin; INTERNATIONAL EDITION, Leipzig; RECHTSS. KAUH-VERLAG, Berlin; KOLLO-VERLAG, Berlin; GRANTHAM REINSCHE, Leipzig; RONNO-VERLAG, Berlin; ROSENER KOBLEN, Berlin; SCHLICKENBERG'SCHE B. u. M., Berlin; EDWARDS SCHWARTZ & Co., Inc., New York; SMOAC PUBLICATIONS, New York; STENGELER VERLAG, Leipzig; CUP. PHASE VERLAG, Berlin; EMMER VUYA VERLAG u. VEREIN, Berlin; OTTO WENTHAL, Berlin. J. M. Gole, Chicago; O. F. Gole & Bro., Apollo Music Co., New York.

Under said agreements, the Locavon is empowered, subject to the various terms and conditions therein contained to authorities, probable, supervise and control performances in the United States of America of certain musical compositions, dramatico-musical works and dramatic works. The Locavon is also engaged generally in the publication, purchase, sale and rental of musical and dramatico-musical works.

The Licensee is engaged in producing and furnishing readings of musical and dramatic-musical works for space radio broadcasting over the station(s) licensed by the Federal Radio Commission as follows:

Station (s)

●

Women

-1000-

Location

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The parties hereto accordingly hereby mutually agree as follows:

1. The LUCARSON hereby grants and the LUCARSON accepts a non-exclusive license to broadcast publicly (excluding television) from the space radio station(s) mentioned hereinabove such musical compositions as may now be and during such period owned or controlled by LUCARSON, (except those mentioned in Paragraph 2 hereof) and the performance of which for space radio broadcasting, the LUCARSON may under the aforesaid agreements, authorize, prohibit, supervise and control. Such license shall continue throughout the period of LUCARSON's ownership or control thereof as aforesaid, but shall not extend beyond the duration of this agreement.

2. The license granted herein does not cover so-called "GAUVE RIGHTS", namely dramatic renditions of dramatic-musical and dramatic works, *e. g.*, musical comedies, operettas, operas, revues, sketches, and like productions in whole or part, as well as symphonic orchestral works with or without chorus, etc., for all of which special permission must be secured from the LICKORSA and special broadcasting performance fees and rental fees shall be paid to the LICKORSA, which will be specified in each instance by the LICKORSA.

3. The LICINSON reserves the right, at any time, from time to time, to restrict the performance by LICINSON unless LICINSON's written consent be first obtained, of any musical composition covered by the license herein created

4. All musical compositions broadcast by Licensees under this license shall be announced by the title and composer, and in the event that same shall be taken from a musical production or sound film, the name of the production or sound film shall also be announced in said broadcasting. The Licensees hereby agrees to furnish weekly to the Copyright Clearance Center, Inc. a list of all musical compositions broadcast by them under this license.

5. The Licensee hereby accepts this license subject to all the conditions, restrictions and limitations set forth in

this agreement and agrees to pay the LATVISON an annual license fee of \$420.00 (Four Hundred Twenty Dollars and No Cents)

Collier and McCanta) - - - - -

which shall be payable in advance in twelve equal monthly installments of \$25.00 (Twenty Five Dollars)

and No. 6000) - - - - -

on the 15th day of each month for a license period of Five (5) years from

1933 to March 31st 1940.

6. In case that LICENSIOR shall be in arrears of any monthly payment, as stipulated herein, for more than 30 days, LICENSIOR has the right to demand payment at once of the balance of all monthly payments due or to become due under this License, in addition to LICENSIOR's right to cancel this license.

7. This license is not exclusive. Further, the right to broadcast any musical compositions granted under this license extends only to the Licensee broadcasting from the station(s) licensed under this agreement or from any other place(s) of origin duly licensed by Licensor, and Licensee may not relay and/or transmit in any manner whatsoever for re-transmission and/or re-broadcasting or otherwise, performances of said musical compositions, through a book-up or set work of stations or otherwise, not covered under this license. Nothing herein contained shall be construed as permitting the Licensee to grant to others the right to broadcast, televise, reproduce or perform publicly for profit or otherwise, by any means, method or process whatsoever, any of the musical compositions so broadcast, or as permitting any receiver of the broadcast of any musical compositions to publicly re-broadcast, televise, perform or reproduce the same for profit or otherwise, by any means, method or process whatsoever, without first obtaining a written license from the Licensor. The Licensee shall have no right to perform or otherwise utilize any musical compositions covered under this agreement except as herein specified.

8. If at any time during the term of this agreement the power wattage, location, wave length, or allotted time be changed, or if the call signals or letters of the Licensee station(s) be changed (whether as a consequence of combination, consolidation or merger with any other broadcasting station(s)) whatsoever, or otherwise the Licensee shall immediately notify the Licensee thereof by UNITED STATES registered mail and this license shall continue, subject to all the conditions, restrictions and limitations therein, except that the license fee shall thereafter be at the rate charged by Licensees in accordance with its prevailing schedule.

9. This agreement is to be and remains in full force and effect until March 31st 1958, and will automatically continue in force thereafter from year to year subject to the right of either party hereto to terminate this agreement on March 31st 1958 or on March 31st in any year thereafter by giving written notice of its decision so to terminate by United States registered mail to the other party at least ninety days prior to the date fixed for termination.

12. This License is personal to the Licensee and is non-assignable, non-transferable, and non-divisible by operation of law, deviation or otherwise; this agreement shall inure to the benefit of and be binding upon Licensee, its successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed in quadruplicate as of the day and year first above written.

SOCIETY OF EUROPEAN STAGE AUTHORS AND COMPOSERS, INC.
De la
Lyman

Attended
Department of N.Y. Prison

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By W. D. Denny (L.S.)
Treas.

MEMBER OF THE BOARD OF DIRECTORS AND SECRETARY,
James
 JAMES

Mr. Kull - (L. 2)

Subject to the terms and conditions of the BROADCASTING PERFORMANCE LICENSE, of which this annex is hereby made part, it is understood that the license fees payable as specified in Paragraph 5 of said BROADCASTING PERFORMANCE LICENSE, shall apply only so long as the LICENSEE shall remain associated in the NATIONAL BROADCASTING COMPANY; INC. network as a "serviced" station thereby securing through means of a license executed between LICENSOR and the NATIONAL BROADCASTING COMPANY, INC. the benefit of certain terms and conditions from LICENSOR.

Commencing pro rata from the day LICENSEE is no longer benefited or "associated" in the NATIONAL BROADCASTING COMPANY, INC. network as aforesaid, of which disassociation LICENSEE agrees to inform LICENSOR immediately by United States registered mail, LICENSEE agrees to pay during the period for which this license is granted, an annual license fee in the amount of \$400.00 (Four Hundred Eighty Dollars and No Cents) in twelve equal monthly installments in the manner provided in Paragraph 5.

SOCIETY OF EUROPEAN STAGE AUTHORS
AND COMPOSERS, INC.

Licensor

By R. C. McNeill President

RECORD OF THE BROADCASTING PERFORMANCE LICENSE

1396

The Trust Licensee

(L.S.)

Perseus

ANNEX "A"

Subject to the terms and conditions of the BROADCASTING PERFORMANCE LICENSE, of which this annex is hereby made part, it is understood that the license fees payable as specified in Paragraph 5 of said BROADCASTING PERFORMANCE LICENSE, shall apply only so long as the LICENSEE shall remain associated in the NATIONAL BROADCASTING COMPANY, INC. network as a "serviced" station thereby securing through means of a license executed between LICENSOR and the NATIONAL BROADCASTING COMPANY, INC. the benefit of certain terms and conditions from LICENSOR.

Commencing pro rata from the day LICENSEE is no longer benefited or "associated" in the NATIONAL BROADCASTING COMPANY, INC. network as aforesaid, of which disassociation LICENSEE agrees to inform LICENSOR immediately by United States registered mail, LICENSEE agrees to pay during the period for which this license is granted, an annual license fee in the amount of **\$400.00 (Four Hundred Eighty Dollars and No Cents)** in twelve equal monthly installments in the manner provided in Paragraph 5.

SOCIETY OF EUROPEAN STAGE AUTHORS
AND COMPOSERS, INC.

Licensor

By PC McNeill

Trust President

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WOMAN OF THE YEAR LITERARY AWARD ASSOCIATION,
Licensee

(L.S.)

Personall Director

NATIONAL BROADCASTING COMPANY, INC.

Woodmen of the World Life Insurance Assn.,

New York, N. Y., December 2, 1935...

Omaha, Nebraska

Radio Station.....KOW

Gentlemen:

We are proposing in this letter the following plan of network cooperation between this Company and your Station.....KOW....., which shall replace, as of the effective date hereof, our present agreement dated January 28, 1935.

I. NETWORK AFFILIATION AND PROGRAM SERVICE

In order that your station may continue to serve the public interest, convenience and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, NBC will, at its own expense, extend its program transmission lines to your control board at your main studios and offer your station network programs of wide variety, including musical, educational, religious, sports, public affairs, international and special events programs. Except in case of failure of facilities, we will offer to furnish your station a minimum of 200 unit hours* of our network sustaining and commercial programs combined during each 28-day period, or if we fail to do so we will pay you at the hourly rate of compensation set forth in Section II, paragraph (1) subdivision (a) of this letter for network commercial programs for any time necessary to make up the difference between the service actually offered to your station and the minimum mentioned above. The network sustaining programs which we will offer to furnish are for sustaining use only and may not be sold by your station for commercial sponsorship or used for any other purpose.

In return for the NBC network affiliation, including sustaining program service, you will waive compensation for 16 unit hours of our network commercial programs broadcast by your station during each 28-day period.

* Unit hours are computed according to the following table:

LOCAL TIME	1 Hour	1/2 Hour	1/4 Hour	1/8 Hour
	Unit Hour Credit	Unit Hour Credit	Unit Hour Credit	Unit Hour Credit
WEDDAYS:				
12:00 MIA. to 3:00 A.M.....	333	250	167	83
3:00 A.M. to 6:00 P.M.....	300	375	250	125
6:00 P.M. to 11:00 P.M.....	1,000	750	500	250
11:00 P.M. to 12:00 MIA.....	300	375	250	125
SUNDAYS:				
12:00 MIA. to 3:00 A.M.....	333	250	167	83
3:00 A.M. to 12:00 Noon.....	300	375	250	125
12:00 Noon to 6:00 P.M.....	750	563	375	188
6:00 P.M. to 11:00 P.M.....	1,000	750	500	250
11:00 P.M. to 12:00 MIA.....	300	375	250	125

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IL STATION COMPENSATION

(1) Beginning with the effective date of this agreement, we will pay you for each succeeding 28-day period, approximately 15 days after the close of such period, in accordance with the following provisions:

Your compensation for broadcasting our network commercial programs under this arrangement will be based upon an average unit hour rate computed for each 28-day period by dividing the total value at the network rate for your station of the network commercial programs broadcast from your station, by the total number of unit hours of such programs during that period.

(a) For the first 25 unit hours in excess of the 16 unit hours covering the network affiliation, NBC will pay you at the rate of 20% of your average unit hour rate for the 28-day period.

(b) For the next 25 unit hours, NBC will pay you at the rate of 30% of your average unit hour rate for the 28-day period.

(c) For all unit hours in excess of 66 unit hours, NBC will pay you at the rate of 37½% of your average unit hour rate for the 28-day period.

(2) The network station rate for your station, on which its compensation will be figured as provided above, will be \$320.00 per full evening hour. This rate will apply between 6:00 P.M. and 11:00 P.M. local time at your station. Rates for other hours and for shorter periods will be as follows:

LOCAL TIME AT STATION	1 Hour	½ Hour	¼ Hour	¼ Hour
	Network Station Rate	Network Station Rate	Network Station Rate	Network Station Rate
DAILY EXCEPT SUNDAY:				
12:00 MID. to 3:00 A.M.....	\$104.67	\$ 85.33	\$ 64.00	\$ 42.67
3:00 A.M. to 6:00 P.M.....	160.00	128.00	96.00	64.00
6:00 P.M. to 11:00 P.M.....	320.00	256.00	192.00	128.00
11:00 P.M. to 12:00 MID.....	160.00	128.00	96.00	64.00
SUNDAY:				
12:00 MID. to 3:00 A.M.....	104.67	85.33	64.00	42.67
3:00 A.M. to 12:00 Noon.....	160.00	128.00	96.00	64.00
12:00 Noon to 6:00 P.M.....	340.00	192.00	144.00	96.00
6:00 P.M. to 11:00 P.M.....	320.00	256.00	192.00	128.00
11:00 P.M. to 12:00 MID.....	160.00	128.00	96.00	64.00

Rates for periods longer than one hour will be in exact proportion to the corresponding one-hour rate. Commissions to agencies and discounts and rebates to advertisers will not be applied to the foregoing rates in computing the average unit hour rate for your station. It is our policy, however, to allow advertisers using a block of time, even though it be broken into half-hour and/or quarter-hour contiguous periods for the purpose of advertising separate products, the benefit of the rate applicable to the entire block of time, in which event the rate for your station for such entire block of time will be used in computing the compensation due your station.

(3) NBC reserves the right to change at any time your network station rate to advertisers from that set forth in the preceding table. In the event of such a change, the station compensation due you will be adjusted as follows:

(a) If NBC increases your network station rate to advertisers above that set forth in the preceding table, such increased rate shall be used in computing the station compensation due you on business actually sold by NBC at such increased rate.

It is further agreed, that if at any time during the period of this contract in your opinion your Station has increased its coverage, we agree, at your request, to re-survey your Station coverage provided such request for re-surveys are not made by you oftener than once every twelve months. We agree to increase your net work station rate if such rate increase is justified by the formula for determining net work station rates then in general use by the National Broadcasting Company, provided further that in the opinion of the National Broadcasting Company it is an opportune time to make such an increase in the rate for your Station.

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(b) Except as provided in subsection (c) of this paragraph, if NBC decreases your network station rate to advertisers below that set forth in the preceding table, such decreased rate shall be used in computing the station compensation due you, provided NBC has given you one year's written notice of its intention to so decrease your station compensation. In the event of such decrease in your station compensation, you may terminate this agreement as of the effective date of such station compensation decrease by giving NBC written notification within ninety days after the receipt of our notice to you to so reduce your compensation.

(c) If NBC decreases your network station rate to advertisers below that set forth in the preceding table and at the same time decreases the network station rate to advertisers of a majority of all NBC network stations, such decreased rate shall be used in computing the station compensation due you, provided NBC has given you ninety days' written notice of its intention to so decrease your station compensation. In the event of such decrease in your station compensation, you may terminate this agreement as of the effective date of such station compensation decrease by giving NBC written notification within thirty days after the receipt of our notice to you to so reduce your compensation.

~~(4) If you accept from national advertisers payments less than those at which NBC sells your station to network advertisers for corresponding periods of time, as set forth in the preceding table, then NBC may, at its option, reduce the network station rate for your station in like proportion, in which event the compensation due you from NBC will be likewise reduced but the right of termination provided for in the preceding paragraph shall not thereby accrue to you.~~

III. NETWORK OPTIONAL TIME

(a) Upon 28 days' notice, your station will broadcast network commercial programs for NBC during any periods requested by NBC within the hours designated below as Network Optional Time, provided, that because of your public responsibility your station may reject a network program the broadcasting of which would not be in the public interest, convenience and necessity.

Network optional time will be as follows:

Weekdays	(New York City Time)	Sundays
10:00 A.M.-12:00 Noon		1:00- 4:00 P.M.
3:00 P.M.- 6:00 P.M.		5:00- 6:00 P.M.
7:00 P.M.- 7:30 P.M.		7:00-11:00 P.M.
8:00 P.M.-11:00 P.M.		

(b) You will maintain and operate the broadcasting equipment of your station in such manner as to keep pace with the broadcasting art and will keep the operation of such equipment entirely under your control.

(c) We will give you at least 28 days' advance notice of the discontinuance of any scheduled series of network commercial programs, failing which we will pay you the compensation you would have received if the series had continued for 28 days following the receipt by you of notice of discontinuance, except that you will not be entitled to compensation for any discontinued programs for which we substitute another network commercial program. Nothing in this paragraph shall entitle you to compensation as a result of our changing a network program, without 28 days' advance notice, to a time in network optional time for which your station is not already committed to carry a commercial broadcast.

(d) Because of the public responsibility of the network and its Associated Stations, NBC may at any time substitute for any scheduled network program a network program which involves a special event of public interest or importance. No compensation will be paid for the cancelled program or for the substituted program unless the substituted program is commercially sponsored, when the regular compensation will be paid for it.

IV. GENERAL

(1) You will submit to NBC daily in writing reports for all network programs broadcast by your station, upon forms provided by us for that purpose.

(4) If you accept from national advertisers payments less than those at which NBC sells your station to network advertisers for corresponding periods of time as set forth in the preceding table, then NBC may, at its option, upon three months' notice in writing to you reduce the network station rate of your station in like proportion, Provided, that during the three months' notice period you have not raised your rate to equal that charged by NBC in which event the compensation due you from NBC will be likewise reduced but the right of termination provided in the preceding paragraph shall not thereby accrue to you.

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(2) You agree to maintain for your station such licenses, including performing right licenses, as now are, or hereafter may be, necessary for your station to broadcast the programs which we furnish to you hereunder provided that the fee for such licenses shall be paid by you to the licensor thereof. (3) Your failure to broadcast a scheduled network program or our failure to deliver it to you, due to failure of facilities, will subject neither of us to liability to the other.

(3) Your failure to broadcast a statement due to failure of facilities, will subject neither of us to liability to the other.

(4) In the event that the transmitter location, power, frequency or hours or manner of operation of your station, are changed at any time, so that your station is less valuable to NBC as a network outlet than it is at the time this offer is accepted by you, NBC will have the right to discontinue this arrangement upon thirty days' written notice to you.

(5) You agree not to sell or lease your station during the term of this contract, unless such sale or lease is expressly made subject to the terms and conditions of this contract.

or lease is expressly made subject to the terms and conditions of the contract or for a network program which we offer you

(6) In the event you substitute another program for a network program which we offer you or lease is expressly made subject to the terms and conditions of this contract, we may have under this contract arising from your failure to broadcast any of our network programs, and shall not be deemed to give you the option to refuse to accept such a network program by making the payments specified in the foregoing sentence.

(7) You agree not to authorize, cause, permit, or enable anything to be done whereby any other payments specified in the foregoing sentence.

(8) You agree not to authorize, cause, permit, or enable anything to be done without our consent whereby a recording is made, or a recording is broadcast, of a program which has been, or is being, broadcast on NBC networks.

(9) For the purpose of eliminating confusion on the part of the radio audience as to the affiliation and identity of the various individual stations comprising radio networks, you agree not to permit the use of your station's facilities by any radio network, other than ours, with which is permanently or occasionally associated any station serving wholly or partially a city or county of one million or more inhabitants.

(10) No waiver by either of us of any breach of any provision of this agreement shall be deemed to be a waiver of any succeeding or succeeding breach of the same or any other provision.

(11) This agreement shall be construed in accordance with the laws of the State of New York.

(12) Any arrangement with your station relates only to NBC and your station and is not to be a waiver of any preceding or succeeding agreement between NBC and any other station.

(12) Any arrangement with your station relates only to NBC and your station and is not relevant to any other station.

(18) This agreement shall become effective at 3:00 A.M., EST, on the15th... day ofDecember....., 1933, and it shall continue for five years thereafter, ~~expiring at 3:00 A.M.~~

If, after examination, you find that the arrangement here proposed is satisfactory to you, please indicate your acceptance on the copy of this letter enclosed for that purpose and return that copy to us.

Very sincerely yours,

NATIONAL BROADCASTING COMPANY, Inc.

Accepted this 21st day of

Verity....., 1987.

What men of the World Live In As an

B7 Wesley Bradburn

*** Insert in lieu of deletion: "for the period of the time of such broadcast and the monies which ~~you~~ would have received for the broadcast of such network program for the period over your facilities."

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AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

THIRTY ROCKEFELLER PLAZA
NEW YORK CITY



H.L. Harman

Gentlemen:

We understand that music is being rendered at your establishment for the entertainment of its patrons. Copyrighted music may not thus be lawfully performed without license of the copyright owners.

The purpose of this communication is to notify you of the facts and the law so that you may avoid committing an illegal act in this regard.

Should there be any doubt in your mind regarding our statements we suggest that you consult your own attorney. An excerpt from the Copyright Law and citation of controlling decisions follow.

This Society represents the group of musical copyright owners named in the enclosed list in the issuance of licenses authorizing the public performance of their compositions.

A staff of investigators is employed for the purpose of discovering infringements against which we are charged with the duty of protecting our members.

Please refrain from including in your programs any compositions copyrighted by any of our members unless and until you have applied for license so to perform them.

Damages provided by the Copyright Law for illegal rendition of musical compositions are fixed at a minimum of \$250.00 for each such infringement. Responsibility for the infringement rests with the proprietor of the establishment.

We have no wish to bring suits against you. If copyrighted music is being publicly performed at your establishment we urge you to make application for license on the form printed on last page hereof. Upon receipt of the application a price for the license will be quoted.

Please do not disregard this notice as a record of it is being kept and should our inspectors subsequently report infringements at your establishment of the copyrights of our members we shall have no alternative but to procure redress thereof through legal action.

Any further information will be given promptly upon your request.

Sincerely yours,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

If music is not being used at
your establishment please so advise.

ENCLOSURE:

1402

The 1909 Copyright Law of the United States of America

(In relation to the public performance of copyrighted music—)

For the information of users of copyright music in public performances for purpose of profit, the following extracts are quoted from the Copyright Law of the United States of America. No attempt is made to construe or interpret the language of the Law. It is here presented just exactly as the Law is written.

The power of Congress to enact Copyright Law derived from the Constitution (Article I, Section 8), which provides:

"The Congress shall have power: . . . To promote the progress of science and useful arts, BY SECURING FOR LIMITED TIMES TO AUTHORS and inventors THE EXCLUSIVE RIGHT TO THEIR respective WRITINGS and discoveries.

The Law itself provides:

SECTION 1—

"That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

- (a) To print, reprint, publish, copy and vend the copyrighted work;
- (b)
- (c)
- (d)

- (e) To perform the copyrighted work publicly for profit if it be a musical composition; and for the purpose of public performance for profit"

SECTION 6—

"That . . . arrangements . . . or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this act"

SECTION 23—

"That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright"

SECTION 25—

"That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

- (a) To an injunction restraining such infringements;
- (b) To pay the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer . . . or in lieu of actual damages and profit such damages as to the Court shall appear to be just, and in assessing such damages the Court may, in its discretion, allow the amounts as hereinafter stated . . . and such damages shall not exceed the sum of five thousand dollars, nor be less than two hundred and fifty dollars, and shall not be regarded as a penalty . . . nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

FOURTH. In the case of dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance"

SECTION 28—

"That any person who wilfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and wilfully aid and abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the Court; provided, however, that nothing in this Act shall be so construed as to prevent the performances of religious or secular works, such as oratorios, cantatas, masses, or oratorio choruses by public schools, church choirs or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit."

COURT DECISIONS

Harbert v. The Stanley Company	242 U. S. 481
Marwell v. Faust Company, Inc.	90 Misc. 108
Hobbs v. Royal Pastime Amusement Co.	242 Fed. 1468
174th St. & St. Nicholas Ave. Amusement Co. v. Marwell	109 N. Y. Supp. 885
Waterson, Berlin & Snyder Co. v. Chris Tolson	233 Fed. 899
Earns v. William Cohen	279 Fed. 876
Witmark v. L. Bamberger & Co.	251 Fed. 176
Witmark v. Perlman Amusement Co.	295 Fed. 479
Perlman Amusement Company v. Witmark	AFD 2 Fed. (3) 1099
Berlin v. Evans	2 Fed. (3) 1099
Bemick v. American Automobile Accessories Co.	249 Fed. 877
Bemick v. American Automobile Accessories Co.	295 Fed. 628
Witmark v. Calloway	5 Fed. (3) 411
Buck v. Lester and Radio Theatre Co.	23 Fed. (3) 413
Berlin, et al v. Euseo & Dalgis	24 Fed. Supp. (3) 877
Buck v. Milam and Williams	24 Fed. Supp. (3) 876
Buck v. Demont, et al	51 Fed. (3) 828
In re Waterson, Berlin & Snyder	28 Fed. (3) 828
Buck v. Jewell-Lafelle Realty Co.	23 Fed. (3) 898
Jewell-Lafelle Realty Co. v. Buck	48 Fed. (3) 794
Buck v. Jewell-Lafelle Realty Co.	268 U. S. 199
Buck v. Debus	299 U. S. 308
Manager v. British Broadcasting Co., Ltd.	51 Fed. (3) 735
Chappell & Co., Ltd. v. Associated Radio Co.	49 Fed. (3) 734
Dreamland Ball Room, Inc. v. Shapiro, Bernstein & Co.	(1927) 2 E.R. 542, reversed
Lets v. Buck	(1928) A.C. 121
Bemick v. General Electric Company	(1928) 702 L.R. 889
	99 Fed. (3) 864
	99 Fed. (3) 861, captioned
	Sumner, 255 U. S. 289
	19 Fed. (3) 889

SUPREME COURT OF THE UNITED STATES

VICTOR HERBERT, HARRY B. SMITH, et al.,

vs.

THE SHANLEY COMPANY

THE JOHN CHURCH COMPANY

vs.

HILLARD HOTEL COMPANY

242 U. S. 591

[January 22, 1917.]

Mr. Justice HOLMES delivered the opinion of the Court.

These two cases present the same question: whether the performance of a copyrighted musical composition in a restaurant or hotel without charge for admission to hear it, infringes the exclusive right of the owner of the copyright to perform the work publicly for profit. Act of March 4, 1909, c.320. § 1 (c). 35 Stat. 1075. The last numbered case was decided before the other and may be stated first. The plaintiff owns the copyright of a lyric comedy in which is a march called "From Maine to Georgia." It took out a separate copyright for the march and published it separately. The defendant hotel company caused this march to be performed in the dining room of the Vanderbilt Hotel for the entertainment of guests during meal times, in a way now common by an orchestra employed and paid by the company. It was held by the Circuit Court of Appeals, reversing the decision of the District Court, that this was not a performance for profit within the meaning of the Act, 221 Fed. Rep. 229, 136 C. C. A. 639.

The other case is similar so far as the present discussion is concerned. The plaintiffs were the composers and owners of a comic opera entitled "Sweethearts," containing a song of the same title as a leading feature in the performance. There is a copyright for the opera and also one for the song which is published and sold separately. This the Shanley Company caused to be sung by professional singers, upon a stage in its restaurant on Broadway, accompanied by an orchestra. The District Court, after holding that by the separate publication the plaintiff's rights were limited to those conferred by the separate copyright, a matter that will be not necessary to discuss, followed the decision in 221 Fed. Rep. 229 as to public performance for profit. 222 Fed. Rep. 344. The decree was affirmed by the Circuit Court of Appeals, 229 Fed. Rep. 340, 143 C. C. A. 460.

CHARGING ADMISSION FEE NOT ESSENTIAL

If the rights under the copyright are infringed only by a performance where money is taken at the door they are very imperfectly protected. Performances not different in kind from those of the defendant could be given that might compete with and even destroy the success of the monopoly the law intends the plaintiff to have. It is enough to say that there is no need to construe the statute so narrowly. The defendants' performances are not eleemosynary. They are a part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item in which those present are expected to order, is not important. It is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise give a luxurious pleasure not to be had from eating a silent meal. If music did not pay it would be given up. If it pays, it pays out of the public's pocket. Whether it pays or not, the purpose of employing it is profit, and that is enough.

Decree Reversed

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PLEASE FILL IN TO COVER YOUR CLASS OF ESTABLISHMENT
AND MAIL TO ADDRESS SHOWN. RATE FOR LICENSE WILL THEN BE QUOTED.

APPLICATION FOR LICENSE

To—

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

30 Rockefeller Plaza
New York City

.....
(City and State)

.....19.....
(Date)

Application is hereby made for license authorizing the non-dramatic public performance of musical works copyrighted by members of your society, in the following described premises:

.....
(Name and street address of establishment as publicly known and advertised)

.....
(Name of proprietor, lessee, or operating corporation)

Method of rendering musicmechanicalpianoorgan.....radio

.....
(If seasonal resort state opening and closing dates)

.....
(Date commenced using music)

THEATRES

Seating capacity
Days per week operated.....
Highest admission price.....
Kind of Music: Talking Pictures.....Radio.....
Radio in Lobby.....Organ.....

CAFES, RESTAURANTS, and MISCELLANEOUS

Seating capacity
State cover or minimum charge.....
Do you maintain dancing.....
Do you maintain a floor show or other entertainment.....
Type of Music: Orchestra.....Radio.....Mechanical Device.....

DANCE HALLS

Capacity of dance floor.....
Price of admission.....
Number in Orchestra.....
During what hours is dance hall operated.....
Days per week operated.....
Weeks per year operated.....

HOTELS

No. of rooms.....Master-controlled radio in guest rooms?.....
Music in public rooms?.....Orchestra.....Radio.....
Mechanical Device.....
During what hours is music rendered.....
State cover or minimum charge.....
Do you maintain dancing.....

Please describe below the type of establishment operated, and extent to which music is used.

License Number.....	Rate \$.....
Received	

.....
(Name of firm, corporation or individual)

By
(Signature)

.....
(Title)

(This is NOT a license; rates therefor will be quoted upon receipt of this application) 1405

DEFENDANT'S EXHIBIT NO. 54

AFFILIATION AGREEMENT

between

COLUMBIA BROADCASTING SYSTEM

485 Madison Avenue · New York City

and

CENTRAL STATES BROADCASTING COMPANY

Station KOIL at Omaha, Nebraska

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AFFILIATION AGREEMENT

between

COLUMBIA BROADCASTING SYSTEM, Inc.*

485 Madison Avenue, New York, New York and

CENTRAL STATES BROADCASTING COMPANY**

Omaha, Nebraska

licensed to operate

radio station KOIL at Omaha, Nebraska

full time on a frequency of 1260 kilocycles

with a power of 5000 watts day-time and 1000 watts night-time

COLUMBIA is engaged in furnishing programs to radio broadcasting stations. The Station and Columbia recognize that the audience regularly listening to the Station will be increased, to their mutual benefit, if Columbia provides the Station with programs not otherwise locally available, including broadcasts from the scenes of national and international events, presentations of music, drama and other entertainment from the principal centers of talent, informative, educational and cultural broadcasts of general interest and other programs of public acceptance and value.

Accordingly, it is mutually agreed as follows:

1. Columbia will furnish to the Station for broadcasting by the Station all available network sustaining programs, without charge, and Columbia network sponsored programs for which clients may request broadcasting by the Station and which are consistent with Columbia's sales and program policies. Columbia agrees that it will, subject to continuance of wire service, make available to the Station an average of at least

sixty hours per week of network sustaining and sponsored programs. Network sustaining programs made available by Columbia are for sustaining use only and may not be sold for local sponsorship or used for any other purpose without the consent of Columbia in specific instances.

2. The Station will broadcast all sponsored programs offered to it by Columbia during the time when the Station is licensed to operate, but need not (except in occasional instances of sponsorship of special events, such as World Series broadcasts, not exceeding two weeks in duration at any one time) accept programs in excess of fifty "converted hours" (as defined below, but computed, during the entire term of this agreement, on the basis of the differences in rates at different hours specified in Columbia's Rate Card No. 23) per week. The Station may require Columbia to give not less than twenty-eight days prior notice of the commencement of sponsored programs for new accounts. Either the Station or Columbia may on special occasions substitute for one or more of such sponsored

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with make called the Station.

programs sustaining programs devoted to education, public service or events of public interest without any obligation to make any payment on account thereof, and in the event of such substitution by either party it will notify the other by wire as soon as practicable after deciding to make such substitution. In case the Station has reasonable objection to any such sponsored program or the product advertised thereon as not being in the public interest the Station may, on three weeks' prior notice thereof to Columbia, refuse to broadcast such program, unless during such notice period such reasonable objection of the Station shall be satisfied. The Station will not make spot announcements in the "break" occurring in the course of a single network program or contiguous programs for the same sponsor and will, at the request of Columbia, desist from making commercial spot announcements in the "break" occurring before or after specified network programs.

3. A "converted hour" means the broadcast over the Station of one or more sponsored network programs for an aggregate period of one hour for which Columbia shall charge its full night-time card rate for the Station. The broadcast for an aggregate period of one hour of one or more network sponsored programs for which Columbia shall charge a fraction of such night-time card rate, such as its daytime card rate, shall be considered as equal to the same fraction of a "converted hour". Fractions of an hour shall for all purposes be treated as their fractional proportions of full hours at the same time of the day.

Columbia will pay the Station for broadcasting sponsored programs supplied by Columbia as specified in Schedule A attached hereto and made a part of this agreement.

4. Payment to the Station will be made by Columbia for network sponsored programs broadcast by the Station within twenty days following the termination of Columbia's four or five week fiscal period, as the case may be, during which such sponsored programs were broadcast.

5. The Station will maintain and operate its facilities in accordance with the best practice in the broadcasting art and conduct of the industry and in accordance with good engineering practice, and will maintain such licenses under copyrights as are neces-

sary to enable the Station to broadcast the programs to be furnished by Columbia. If the power, frequency, time or manner of operation of the Station is changed, resulting in a substantial lessening of the value of the Station as a Columbia outlet, Columbia may at any time thereafter cancel this agreement on at least sixty days' notice to the Station.

6. Columbia will whenever practicable provide its advance notices of the programs to be furnished to the Station. In the event of any change of programs, Columbia will notify the Station as soon as possible and the Station will make every effort immediately to conform with the substituted programs.

7. Neither party shall be liable to the other for claims by third parties or for failure to operate facilities or supply programs for broadcasting if such failure is due to failure of equipment or action or claims by network clients, labor disputes or any cause or reason beyond the party's control.

8. Columbia will continue the Station as the exclusive Columbia outlet in the city in which the Station is located and will so publicize the Station, and will not furnish its exclusive network programs to any other station in that city, except in case of public emergency. The Station will operate as the exclusive Columbia outlet in such city and will so publicize itself, and will not join for broadcasting purposes any other formally organized or regularly constituted group of broadcasting stations. The Station shall be free to join occasional local, state-wide or regional hook-ups to broadcast special events of public importance.

9. The obligations under this agreement are subject to all applicable laws, rules and regulations, present and future, especially including rules and regulations of the Federal Communications Commission.

10. If the Station applies to the Federal Communications Commission for consent to a transfer of its license or transfers all or any of its assets without which it would be unable to perform this agreement, it will agree with the transferee that the transfer shall be subject to the obligation on the part of the transferee to assume and perform this agreement, unless this condition shall be waived by Columbia in writing.

11. If either the Station or Columbia fails to in-

sist upon strict performance of any of the covenants or conditions of this agreement, such failure shall not be construed as an election or as a waiver or condonation of any breach, or as a waiver or relinquishment for the future of any such covenants or conditions.

12. The term of this agreement shall begin on **see Schedule A attached hereto.**

As of the beginning of the term hereof, this agreement takes the place of and is substituted for any and all agreements heretofore existing between the parties hereto, subject only to the fulfillment of any accrued obligations thereunder.

13. Any notice hereunder shall be sent by registered mail to the parties at their respective addresses hereinbefore set forth.

14. This agreement has been made in the State of New York and shall be governed by the laws of that State applicable to contracts fully to be performed therein, and this agreement is not subject to oral modification.

IN WITNESS WHEREOF, this agreement has been signed by the parties and dated the

25 day of March, 1938.

COLUMBIA BROADCASTING SYSTEM, INC.

By

W. L. Carpenter

CENTRAL STATES BROADCASTING COMPANY

By

W. L. Carpenter
W. L. Carpenter

April 25, 1938

This contract includes the affiliation agreement between the parties and memorandum letter marked "B" together with letter of acceptance marked "C" all of this date. All of these memoranda and contracts shall be construed together as one agreement even though they appear as separate writings.

COLUMBIA BROADCASTING SYSTEM, INC.

By

W. L. Carpenter
Vice-President

CENTRAL STATES BROADCASTING COMPANY

By

W. L. Carpenter
Vice-President

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SCHEDULE A

(Attached to and forming part of Affiliation Agreement between
Columbia Broadcasting System, Inc. and Central States
Broadcasting Company, relating to Station KOIL,
Omaha, Nebraska)

The Station represents that at the date of this agreement it is affiliated with National Broadcasting Company, Inc. under an agreement which is terminable at the option of the Station upon one year's notice. Promptly upon the execution hereof, the Station will exercise such option and will give notice to National Broadcasting Company, Inc. whereby such agreement shall be terminated not later than one year from the date of the giving of such notice. This agreement between Columbia and the Station shall not become effective unless and until the affiliation of the Station with National Broadcasting Company, Inc. shall cease by termination of said agreement within twelve months from the date of giving of such notice, and the term of this agreement shall begin upon the termination of said agreement and continue thereafter for a period of five calendar years.

From and after the date that this agreement shall begin and for each calendar year during the term hereof commencing on said date, Columbia will pay the Station for broadcasting sponsored programs at a rate for each "converted hour" in each week to be calculated in accordance with one or the other of the following options:

A. Option A:

The Station shall not be credited for the first five "converted hours" in each week, but for each of the next five "converted hours" per week, the Station shall be credited with \$60, and for each of the next five hours per week, the Station shall be credited with \$70, and for each "converted hour" per week in excess of such first fifteen "converted hours" per week, the Station shall be credited with \$75; and in each case the Station shall be credited with proportionate sums for a fraction of a "converted hour".

B. Option B:

The Station shall not be credited for the first five "converted hours" in each week, but for each of the next five "converted hours" per week, the Station shall be credited with \$50, and for each of the next five "converted hours" per week, the Station shall be credited with \$75, and for each "converted hour" per week in excess of such first fifteen "converted hours" per week, the Station shall be credited with \$82.50; and in

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SCHEDULE A

2

each case the Station shall be credited with proportionate sums for fractions of a "converted hour".

The total of the credits in each week shall be divided by the total number of such "converted hours" in that week and the result shall be the rate payable by Columbia to the Station for each "converted hour" in that week.

At least thirty days prior to the date when the term of this agreement shall begin the Station shall notify Columbia in writing under which of the foregoing Options A or B it elects to be paid for the first calendar year of the term of this agreement, and at least thirty days prior to each anniversary of the date on which this agreement shall begin, the Station shall likewise notify Columbia under which of the foregoing Options A or B it elects to be paid for the ensuing calendar year, and payment shall be made by Columbia to the Station accordingly. In default of any notice as aforesaid prior to any such anniversary, Columbia shall continue to pay the Station for the ensuing year on the basis of the Option in effect for the preceding year.

When this agreement becomes effective, Columbia will list the Station as a Basic Station on Columbia's network, and Columbia shall charge a gross hourly night-time card rate of \$175 for broadcasting sponsored programs over the Station.

If thereafter Columbia changes the gross hourly card rate at which it sells broadcasting time over the Station for sponsored programs from \$175 per night-time hour, the rate per "converted hour" in each week, computed as above provided, will be changed in respect of the number of "converted hours" for which Columbia receives such changed rate, by the percentage of such change in such gross hourly card rate from \$175 per night-time hour.

(End of Schedule A)

1411-1412

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[fols. 1412-1413] DEFENDANTS' EXHIBIT No. 60
G. L. Harman

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, LINCOLN DIVISION

Equity No. 562

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, et al.,
Complainants,

against

HARRY R. SWANSON, as Secretary of State of Nebraska,
et al., Defendants

Answering the interrogatories propounded by the defendants, the complainant, Gene Buck, states:

Answering Interrogatory No. 1, which reads as follows:

Q. "State the name and address of each composer and author member of the American Society of Composers, Authors and Publishers as of January 1st of each year from the date of the organization of the Society to and including the date of answering this interrogatory."

A. The names and addresses of the present composer and author members of the Society are annexed hereto as Exhibit 1. The complainant objects to so much of Interrogatory No. 1 as requests the name and address of the composer and author members of the Society as of January 1st of each year from the date of the organization of the Society to the date hereof, with the exception of the list of the present members which is hereto annexed. Furnishing this information would serve no useful purpose and would mean an examination of the records of the Society since 1914. This would involve the employment of a staff of clerks and the expenditure of a vast sum of money, and [fol. 1414] the information could not be gathered in less than a period of approximately six months. The physical work of typing the twenty-four pages of present names and addresses alone took a substantial period of time.

Answering Interrogatory No. 2, which reads as follows:

Q. "State the name and address of each publisher member of the American Society of Composers, Authors and Publishers as of January 1st of each year from the date

of the organization of the Society to and including the date of answering this interrogatory."

A. The names and addresses of the present publisher members of the Society are annexed hereto as Exhibit 2. The complainant objects to so much of Interrogatory No. 2 as requests the name and address of the publisher members of the Society as of January 1st of each year from the date of the organization of the Society to the date hereof, with the exception of the list of the present members which is hereto annexed. Furnishing this information would serve no useful purpose and would mean an examination of the records of the Society since 1914. This would involve the employment of a staff of clerks and the expenditure of a vast sum of money, and the information could not be gathered in less than a period of approximately three months.

Answering Interrogatory No. 3, which reads as follows:

Q. "State the name and address of each corporation, company or catalogue of copyrighted musical compositions or arrangements thereof, owned or controlled in any manner by publishers who were members of the American Society of Composers, Authors and Publishers as of December 1, 1937, which are included in the Society's representation by reason of the Society's contract with the publisher member owning or controlling such corporation, [fol. 1415] company or catalogue, and state the name of the publisher member exercising such ownership or control."

A. The following publishers own or control the following named subsidiary corporations, companies or firms, and the catalogues of such subsidiaries. The address in each case is that of the member list given in answer to Interrogatory No. 2. There is no such thing as the name and address of a catalogue.

A B C Standard Mus. Publications, Inc.
Berlin, Irv., Standard Mus. Corp.

Alfred Music Co., Inc.
Feature Music Syndicate
Lowe-Goulston, Inc.
Manus Music Co., Inc.,
Piantadosi, Al., Music Publisher
Rosey, Geo., Band & Orch. Catalog.
Song Creators

- Ascher, Emil, Inc.
 Brooks & Denton
 Empire Music Co.
 Royal Music Co.
- Belwin, Inc.
 Berg, S. M.
 Cinema Music Co.
- Boston Music Company
 Hatch Music Company
 Thompson, C. W., Co.
- Broadway Music Corporation
 Artmusic, Inc.
 Empire Music Co., Inc.
 York Music Co., The
- Chappell & Co., Inc.
 Chappell-Harms, Inc.
- Crawford Music Corporation
 De Sylva, Brown & Henderson, Inc.
 Green & Stept
 Yellen, Jack, Inc.
- Curtis, L. B., Music Pub.
 Van Alstyne & Curtis
- Davis, Joe, Inc.
 Aloha Music Co.
 Georgia Music Co.
 Triangle Mus. Pub. Co., Inc.
- [fol. 1416] Exclusive Publications Inc.
 Bloom, Harry, Inc.
 Milsons Mus. Pub. Corp.
- Feist, Leo., Inc.
 Brown, Nacio Herb, Inc.
- Fischer, Carl, Inc.
 Oxford University Press
- Flammer, Harold, Inc.
 Luckhardt & Belder
- Fox, Sam, Publishing Co.
 Pallma Music Publishers, Inc.
- Gamble Hinged Music Co.
 Wulschner Music Co.

Goodman Music Co., Inc.
 Handman & Goodman, Inc.
 Handman, Kent & Goodman, Inc.
 Universal Music Co., Ltd.

Hall-Mack Company
 Geibel, Adam, Music Co.

Hope Publishing Company
 Bigelow-Main-Excell Co.
 Excell, E. O., Co.
 Tabernacle Pub. Co.

Jacobs, Walter, Inc.
 Abt, Valentine
 Bates & Bendix
 Bendix, Theodore
 Eby, Walter M.
 Farrand, Van L.
 Gay, Mace, Catalog
 Jacques, Percy
 Musiclovers Co.
 Partee, C. L., Music Co.
 Shattuck, B. E.
 Virtuoso Music School
 Williams, Ernest S.

Kay & Kay Music Pub. Corp.
 Franklin, John, Music Co.

Lincoln Music Corp.
 Capano, Frank, Music Pub.

Lorenz Publishing Co.
 Tullar-Meredith Co., Inc.

[fol. 1417] Marks, Edw. B., Music Corp.
 Bergstrom Mus. Co., Ltd.
 Berliner, Leo E., Pub. Co.
 Chilton, Forrest S.
 Dresser, Paul, Pub. Co.
 Evans (George Honeyboy Evans)
 Fassio, A.
 Globe Music Publishing Co.
 Halle, R. L.
 Jordan, Julian, Mus. Co.
 King, Chas. E.
 Lecuona Music Co.—Cuba

Lyceum Music Co.
 Metz, Theodore, Music Co.
 Miller, Roy M.
 Musin, Ovide
 Penn, Wm. H.
 Petrie, H. W., Catalog
 Prelude Mus. Co.
 Primrose & West Mus. Co.
 Recker, Robert, Music Co.
 Reed, Bert, Catalog
 Reed & Keller Catalog
 Seitz, R. F.
 Shields, Ren
 Stern, Jos. W., & Co.
 Vandersloot Music Publishing Co.
 Wagner & Levien
 Willis-Woodward Mus. Co.

McKinley Music Co.
 Root, Frank K., & Co.

Mills Music, Inc.

American Composers, Inc.
 Beck, Mort
 Clark, Frank, Mus. Co.
 Daly, Joseph, Mus. Pub. Co.
 Edwards, Gus, Mus. Pub. Co.
 Gordon & Rich, Inc.
 Gotham Attucks Mus. Co.
 Gotham Mus. Service, Inc.
 Jerome, M. K.
 Jerome & Schwartz Pub. Co.
 Kalmar, Puck & Abraham Consolidated
 Keit Music Corp.
 Kornheiser, Phil, Inc.
 Lawrence Music Pubs., Inc.
 Morse, Theodore, Music Co.
 Nelson, Jack, Mus. Co.
 Stark & Cowan, Inc.
 Stept & Powers, Inc.
 Sterling Songs, Inc.
 Sunlight Mus. Co., Inc.
 Waterson, Berlin & Snyder, Co.
 Waterson, Henry, Inc.
 Williams, Harry, Mus. Co.

[fol. 1418] Nazarene Publishing House

Bilhorn Bros. Mus. Co.

Lillenas Pub. Co.

Olman Music Corporation

Down Home Music Co.

Paull-Pioneer Music Co.

Rossiter, Harold, Mus. Co.

Photo Play Music Co., Inc.

Luz Brothers Mus. Pubs.

Music Buyers Corporation

Pond, Wm. A., & Company

Ellis, Robin

Popular Melodies, Inc.

Spier & Coslow, Inc.

Red Star Songs, Inc.

Allen & Harrison Mus. Co.

Robbins Music Corporation

Mayfair Mus. Corp.

Metro-Goldwyn-Mayer Corp.

Sonnemann Mus. Co., Inc.

Whiteman, Paul, Publications

Wiedoeft, Rudy, Mus. Pub. Co.

Rubank, Inc.

Carlson, M. L.

Finder & Urbanek

Victor Music Co.

Santly Bros.—Joy, Inc.

Santly Bros., Inc.

Schirmer, G., Inc.

Heffelfinger, R. W.

Sanders-Weiss, Inc.

Schuster & Miller, Inc.

Kornheiser-Gottler, Inc.

Kornheiser-Schuster, Inc.

Southern Music Pub. Co., Inc.

Acme Music Pub. Co.

Bleyer, Archie, Inc.

Blues Music Co.

Bradford, Perry, Inc.

Bradford, Perry, Music Co.

Palmer, Robert, Music Pub. Co.

Stasny Music Corp.
 Bibo-Lang, Inc.
 Stasny-Lang, Inc.

[fol. 1419] Tesio, P., & Sons
 Major Music, Inc.
 Tesio-Major, Inc.

Vogel, Jerry, Music Co., Inc.
 Crumit, Frank, Songs Co.
 Haviland, F. B., Pub. Co.
 Worth, Geo. T., & Co.

Words & Music, Inc.
 Davis, Coots & Engel, Inc.
 Engel, Harry, Inc.
 Keit-Engel, Inc.

Answering Interrogatory No. 4, which reads as follows:

Q. "State the name and address of each corporation, company or catalogue of copyrighted musical compositions or arrangements thereof, owned or controlled in any manner by authors or composers who were members of the American Society of Composers, Authors and Publishers as of December 1, 1937, which are included in the Society's representation by reason of the Society's contract with the author or composer member owning or controlling such corporation, company or catalogue, and state the name or names of the member or members exercising such ownership or control."

A. It is impossible to answer this interrogatory. Catalogues of copyrighted musical compositions have no name or address. I am not informed of and do not know the names and addresses of the corporations or companies owned or controlled by the author and composer members of the Society. Speaking for myself, however, as an author member of the Society, I do not own any corporation, company or catalogue of copyrighted musical compositions, or arrangements thereof. I do not own any copyrights. My rights are purely contractual and I have renewal rights, as stated in my affidavit on the motion for a temporary injunction, verified June 8, 1937, all of the statements of which I repeat, reiterate and reallege in answer to these interrogatories with the same full force and effect as if fully set [fol. 1420] forth and repeated herein. As to other composer

members of the Society, I respectfully refer the Court to the affidavit of Deems Taylor on the same motion, verified June 8, 1937, and I am informed and believe that the other composer and author members of the Society have contracts similar to that set forth in the said affidavits.

Answering Interrogatory No. 5, which reads as follows:

Q. "State the names and addresses of all associations or societies located in any foreign country which are represented by the American Society of Composers, Authors and Publishers in licensing the public performance of musical compositions in the United States and in the State of Nebraska."

A. The names and addresses of the associations or societies located in foreign countries which have contractual relations with the American Society of Composers, Authors and Publishers are annexed hereto in a list marked Exhibit 3.

Answering Interrogatory No. 6, which reads as follows:

Q. "State the complete and exact wording of the contract or agreement now in effect between each of the foreign Societies named in the answer to Interrogatory No. 5, together with any supplemental additions or modifications thereto and interpretations thereof."

A. True copies of each and every contract between the American Society of Composers, Authors and Publishers and the foreign societies in force at the present time are annexed hereto as Exhibit 4, 4-a, 4-b, 4-c, 4-d, 4-e, 4-f, 4-g, 4-h, 4-i, 4-j, 4-k, 4-l, 4-m, 4-n, 4-o, 4-p, 4-q, 4-r, 4-s, 4-t.

[fol. 1421] Answering Interrogatory No. 7, which reads as follows:

Q. "Will you voluntarily produce, upon the trial of this cause, without being required to do so by subpoena or other judicial process, all contracts between the American Society of Composers, Authors and Publishers and any association or society or copyright owner in any foreign country?"

A. The answer to Interrogatory No. 6 sets forth true and correct copies of all the contracts referred to in Interroga-

tory No. 7. The complainant demands, pursuant to Equity Rule 58, that the defendants admit in writing the execution and genuineness of the said contracts within five days after the service of a copy of these answers to defendants' interrogatories. Complainants' counsel will produce the original of each and every one of these contracts upon the trial.

Answering Interrogatory No. 8, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each publisher who was a member of the American Society of Composers, Authors and Publishers as of December 1, 1937."

A. For the reasons stated in the affidavits annexed to the motion for a temporary injunction herein, it is impossible to state the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof entered or registered, pursuant to the Copyright Laws of the United States during the past [fol. 1422] twenty-eight years. This is a matter of public record, and the records are just as available to the defendants as they are to the complainants. It would take from six months to a year to get this information. A compilation of this information would cost in excess of \$25,000. The complainant, American Society of Composers, Authors and Publishers, however, has endeavored to make a list of such musical compositions as are currently used to such an extent as to make a worthwhile and serviceable record. A copy of such compilation is annexed hereto as Exhibit 5.

Answering Interrogatory No. 9, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions or arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the

Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each of the corporations, companies or catalogues described in your answer to Interrogatory No. 3."

A. This interrogatory is answered by the answer to Interrogatory No. 8.

Answering Interrogatory No. 10, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions or arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each of the corporations, companies or catalogues included in your answer to Interrogatory No. 4."

[fol. 1423] A. This interrogatory is answered by the answer to Interrogatory No. 8.

Answering Interrogatory No. 11, which reads as follows:

Q. "State the name and address of each publisher member of each association or society located in any foreign country which is included in the representation of the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatory No. 5 and No. 6, and state the name of such foreign association or society of which each publisher is a member."

A. The names of each publisher member of the foreign societies are included in the list of all members of the foreign societies, which is hereto annexed as Exhibit 6. The addresses of these publishers, which are in foreign countries, are not available to me at this time.

Answering Interrogatory No. 12, which reads as follows:

Q. "State the name and address of each corporation, company, firm or catalogue of copyrighted musical compositions or arrangements thereof, owned or controlled in any

manner by publisher members of foreign associations or societies included in your answer to Interrogatory No. 11, and state the name of the publisher member exercising such ownership or control and the name of the foreign association or society of which a member."

A. As stated in answer to Interrogatory No. 4, catalogues have no name or address, and I do not know the name and address of each corporation, company or firm owned or controlled in any manner by publisher members of foreign associations or societies, other than the information contained in Exhibit "6".

[fol. 1424] Answering Interrogatory No. 13, which reads as follows:

Q. "State the name and address of each corporation, company, firm or catalogue of copyrighted musical compositions or arrangements thereof, owned or controlled in any manner by authors or composers or by the estates or beneficiaries of deceased authors and composers who are members of foreign associations or societies which are included in the American Society of Composers, Authors and Publishers' representation by reason of the membership in such foreign association or society of the authors or composers owning or controlling such corporation, company, firm or catalogue."

A. As stated in answer to Interrogatory 4, catalogues have no name or address, and I do not know the name and address of each corporation, company or firm owned or controlled in any manner by author or composer members of foreign associations or societies, other than as such information may be contained in Exhibit "6".

Answering Interrogatory No. 14, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of

each of the publisher members of an association or society located in a foreign country which is included in the representation of the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. It is impossible to answer this interrogatory for the reasons expressed in answer to Interrogatory No. 8.

Answering Interrogatory No. 15, which reads as follows:

[fol. 1425] Q. "State the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each corporation, company, firm or catalogue described in your answer to Interrogatory No. 12 as owned or controlled by a publisher member of a foreign association or society, which is included in the representation by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. It is impossible to answer this interrogatory for the reasons stated in answer to Interrogatory No. 8.

Answering Interrogatory No. 16, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each corporation, company, firm or catalogue described in your answer to Interrogatory No. 13 as owned or controlled by an author or composer member of a foreign association or society, which copyrights are included in the representation

by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. It is impossible to answer this interrogatory for the reasons stated in answering Interrogatory No. 8.

Answering Interrogatory No. 17, which reads as follows:

Q. "State the name and address of each corporation, company or catalogue of copyrighted musical compositions or arrangements thereof, owned or controlled in any manner by the estates or beneficiaries of a deceased author or composer member of the American Society of Composers, Authors and Publishers which are included in the Society's representation by virtue of the Society's contract with the estate or beneficiary of such deceased author or composer, and State the name of the estate and the name of the beneficiary."

A. I do not know the names or addresses of each corporation or company (and there is no name and address of any catalogue) of copyrighted musical compositions or arrangements thereof, owned or controlled by estates or beneficiaries of deceased author or composer members of the Society. With respect to the ownership of copyrights by such members, I respectfully refer the Court and incorporate herein and make a part hereof as if the facts were fully and at length repeated herein, the affidavit of Anne Paul Nevin, verified June 8, 1937 and the affidavit of Ella Herbert Bartlett, verified June 8, 1937, and exhibits annexed thereto submitted in support of the motion for a temporary injunction.

Answering Interrogatory No. 18, which reads as follows:

Q. "State the total number of individual entries or registrations of published copyrights of musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each of the corporations, companies or catalogues described

in your answer to Interrogatory No. 17 as owned or controlled by the estate or beneficiary of a deceased author or composer which are included in the Society's representation by virtue of the Society's contract with such estate or beneficiary. "

A. I cannot answer this interrogatory for the same reasons given in answer to Interrogatories Nos. 8 and 17.

[fol. 1427] Answering Interrogatory No. 19, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date in the name of each publisher who was a member of the American Society of Composers, Authors and Publishers as of December 1, 1937."

A. I do not have a list of the renewals of expired copyrights of musical compositions or arrangements thereof entered or registered with the Register of Copyrights during the past twenty-eight years in the name of the publisher members of the Society. This information is ascertainable from the files of the Register of Copyrights and is equally available to the defendants as to the plaintiffs. The compilation of such a list would involve a search taking from six months to a year, and would entail the expenditure of a sum of money in excess of \$25,000.

Answering Interrogatory No. 20, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to

date in the name of each of the corporations, companies or catalogues described in your answer to Interrogatory No. 3 as owned or controlled by a publisher member of the American Society of Composers, Authors and Publishers."

A. I cannot answer this interrogatory for the reasons set forth in answer to Interrogatories Nos. 3, 8 and 19.

[fol. 1428] Answering Interrogatory No. 21, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C. during the past twenty-eight years from January 1, 1909, to date in the name of each author or composer, or both, who was a member of the American Society of Composers, Authors and Publishers as of December 1, 1937, or in the name of each corporation, company or catalogue described in your answer to Interrogatory No. 4 as owned or controlled by a composer or author member of the Society."

A. I cannot answer this interrogatory for the reasons set forth in answer to Interrogatories Nos. 4, 8 and 19.

Answering Interrogatory No. 22, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each deceased composer or author member of the American Society of Composers, Authors and Publishers during the lifetime of such deceased member, which renewed copyrights are included in the Society's representation by virtue of the Society's contract with the estate or beneficiary of such deceased member."

A. I cannot answer this interrogatory for the same reasons set forth in Interrogatories Nos. 8, 17 and 19.

Answering Interrogatory No. 23, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical [fol. 1429] compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of the estate or beneficiary of each deceased composer or author member of the American Society of Composers, Authors and Publishers, which renewed copyrights are included in the Society's representation by virtue of the Society's contract with the said estate or beneficiary of such deceased member."

A. I cannot answer this interrogatory for the same reasons embraced in answer to Interrogatory No. 17.

Answering Interrogatory No. 24, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each of the corporations, companies or catalogues described in your answer to Interrogatory No. 17 as being owned or controlled by the estate or beneficiary of a deceased member of the American Society of Composers, Authors and Publishers and which renewed copyrights are included in the Society's representation by virtue of the Society's contract with the said estate or beneficiary of such deceased member."

A. I cannot answer this interrogatory for the same reasons embraced in the answers to Interrogatory 17.

Answering Interrogatory No. 25, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, [fol. 1430] D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each of the publisher members of an association or society located in a foreign country which is included in the representation of the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 26, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each corporation, company, firm or catalogue described in your answer to Interrogatory No. 12 as owned or controlled by a publisher member of a foreign corporation or society, which renewed copyrights are included in the representation by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 27 which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each composer or author member of a [fol. 1431] foreign association or society, which renewed copyrights are included in the representation by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 28, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of each corporation, company, firm or catalogue described in your answer to Interrogatory No. 13 as owned or controlled by an author or composer member of a foreign association or society, which renewed copyrights are included in the representation of the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 29, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangement of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C. during the past twenty-eight years from January 1, 1909, to date, in the name of each deceased composer or author member of a foreign association or society during the life-[fol. 1432] time of such deceased member, which renewed copyrights are included in the representation by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 30, which reads as follows:

Q. "State the total number of individual entries or registrations of renewals of expired copyrights of musical compositions and arrangements thereof, including renewals of copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., during the past twenty-eight years from January 1, 1909, to date, in the name of the estate or beneficiaries of each deceased composer or author member of a foreign association or society, or in the name of each corporation, company, firm or catalogue owned or controlled by the estate of beneficiary of a deceased author or composer member of a foreign association or society, which renewed copyrights are included in the representation by the American Society of Composers, Authors and Publishers by virtue of the agreements with such foreign association or society described in your answer to Interrogatories No. 5 and No. 6."

A. I cannot answer this interrogatory for the same reasons embraced in my answer to Interrogatories Nos. 4, 11, 12, 13, 17 and 19.

Answering Interrogatory No. 31, which reads as follows:

Q. "Will you voluntarily produce, upon the trial of this cause, without being required to do so by subpoena or other judicial process, a copy of the "Directory of Composers, Authors and Publishers of Musical Works and of Performing Rights Societies throughout the World" published by the American Society of Composers, Authors and Publishers as of January 1, 1936, together with any supplements and additions thereto and new editions thereof?"

A. Yes. This is annexed hereto as Exhibit "6".

[fol. 1433] Answering Interrogatory No. 32, which reads as follows:

Q. "Will you voluntarily produce, upon the trial of this cause, without being required to do so by subpoena or other judicial process, a copy of the book or record entitled "ASCAP Program Listings 1935" published by the American Society of Composers, Authors and Publishers?"

A. Yes. This is annexed hereto as Exhibit "5".

Answering Interrogatory No. 33, which reads as follows:

Q. "State in detail the manner in which and the purpose for which the book or record entitled "ASCAP Program Listings 1935" was compiled including (a) the name and address of the person in charge of the compilation, (b) the number of programs examined, (c) the source or sources from which the program information was obtained, (d) the symbols used in the compilation and the meaning of each symbol, (e) the rules adopted and used to govern the examination of the programs comprising the tabulation."

A. The person in charge of the compilation was E. C. Mills, 30 Rockefeller Plaza, New York City.

During the year 1935 ASCAP examined 33,461 programs as broadcast by the two principal networks, and the Program Listings show a title-by-title listing of the 20,939 different musical compositions shown thereon, with the number of renditions credited to each title, involving a total of 7,545,051 credit entries to accounts of composers, authors and publishers.

The tabulations also show the names of the writers and publisher of each title, their respective performing right

society affiliation, and the share of the program credit allocated to each.

The listing is separated into two sections, as follows:

[fol. 1434] (1) Copyrighted published works (pages A-1, etc.)

(2) Copyrighted arrangements of non-copyright (in U. S. A.) works (pages NC-A-1, etc.)

The following general rules govern the examination and analysis of Programs:

(1) When a composition is included in a network broadcast a credit is given for each connected station, thus: if 60 stations as a network broadcast the program, 60 credits are given to each original copyright.

(2) During 1935 only one credit was given to rendition of a copyrighted "theme" or "signature" number, regardless of the number of times played on the program. Commencing 1936 one credit was given for each partial or entire use.

(3) All works under original copyright in the U. S. A. are given an equal value, or credit, viz: one full point for each partial or complete rendition. This one point of credit is divided into halves—one of which is allotted to the publisher or publishers; and the other to the writer or writers, and divided equally among as many of each as there may be.

(4) Works listed as rendered from unpublished manuscripts are generally insufficiently identified, and are therefore not included.

(5) As to copyrighted arrangements of non-copyrights (in the U. S. A.), one-half point credit is given for each rendition. This is divided: one-fourth to the publisher (in U. S. A. only) and one-fourth to the writer (s) if members [fol. 1435] of ASCAP or a society with which ASCAP is affiliated.

(6) The symbols used in the listings have the following significance:

1. NM Non-member of ASCAP or any affiliated Society.
2. NC Non-Copyright (in U. S. A.)
3. ASCAP American Society

4. ARGENTORES	Argentine Society	
5. AKM	Austrian	"
6. NAVEA	Belgian	"
7. SBAT	Brazilian	"
8. OSA	Czecho-Slovakian	Society
9. KODA	Danish	"
10. PRS	English	"
11. TEOSTO	Finnish	"
12. SACEM	French	"
13. STAGMA	German	"
14. MARS	Hungarian	"
15. SIAE	Italian	"
16. CZ	Jugo-Slavian	"
17. TONO	Norwegian	"
18. AUTORES	Portuguese	"
19. RUMANIA	Rumanian	"
20. STIM	Swedish	"
21. GEFA	Swiss	"

Programs analyzed are the programs actually broadcast [fol. 1436] according to the records of the stations—not the programs as advertised in advance in the public press. Analysis covers programs for the entire day of operation.

Answering Interrogatory No. 34, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the stenographic report heretofore printed and distributed by the American Society of Composers, Authors and Publishers of the conferences held in the offices of the Society on or about September 20, 1922, and October 25, 1922, between officers of the Society and representatives of the Authors League of America, Music Industries Chamber of Commerce, Music Publishers Association of the United States, Department of Commerce of the United States, National Radio Chamber of Commerce and other radio broadcasting representatives?"

A. Yes, subject to the Court's ruling as to relevancy and materiality.

Answering Interrogatory No. 35, which reads as follows:

Q. "State the name of each representative of the American Society of Composers, Authors and Publishers present

at either of the conferences referred to in Interrogatory No. 34 and the official capacity of each such person.

[fol. 1437] A. All the information desired above, will appear from the stenographic report referred to in Interrogatory No. 4, and if the Court should rule that such report is relevant and material, it will be furnished upon the trial.

Answering Interrogatory No. 36, which reads as follows:

Q. "Will you produce voluntarily upon the trial of this cause, without being required to do so by subpoena or other judicial process a verbatim copy of the open letter dated June 28, 1922, directed by the American Society of Composers, Authors and Publishers to the Motion Picture Theatre Owners Association which was reproduced and distributed by the said Society?"

A. Yes.

Answering Interrogatory No. 37, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, a copy of the printed pamphlet entitled "How the Public Gets its Music" printed and distributed by the American Society of Composers, Authors and Publishers in or about April 1933 and reprinted and distributed under date of August 1934?"

A. Yes.

Answering Interrogatory No. 38, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, a copy of the printed pamphlet entitled "Who uses Music and Why" printed and distributed by the American Society of Composers, Authors and Publishers in or about May 1934 and reprinted and distributed in or about April 1935?"

A. Yes.

[fol. 1438] Answering Interrogatory No. 39, which reads as follows:

Q. "State the name and address of each officer, the general manager and the chairman or head of each committee

of the American Society of Composers, Authors and Publishers for each year from the date of the organization of the Society to and including the year 1937."

A. The names and addresses of the present officers, general manager, members of the board of directors and members of all committees of the American Society of Composers, Authors and Publishers are as follows:

Officers

Gene Buck, President, 30 Rockefeller Plaza, New York City.

Louis Bernstein, Vice-President, 1270 Sixth Avenue, New York City.

Otto A. Harbach, Vice-President, 244 Orienta Avenue, Mamaroneck, N. Y.

Joseph Young, Secretary, 17 Myrtle Drive, Great Neck, N. Y.

Gustave Schirmer, Treasurer, 3 East 43rd Street, New York City.

J. J. Bregman, Assistant Secretary, 1629 Broadway, New York City.

Sigmund Romberg, Assistant Treasurer, 1023 No. Roxbury Drive, Beverly Hills, California.

E. C. Mills, Chairman of Administrative Committee, 30 Rockefeller Plaza, New York City.

John G. Paine, General Manager, 30 Rockefeller Plaza, New York City.

Herman Greenberg, Assistant General Manager, 30 Rockefeller Plaza, New York City.

Schwartz and Frohlich, General Counsel, 1450 Broadway, New York City.

Board of Directors

Fred E. Ahlert, 10 West 96th Street, New York City.

Louis Bernstein, 1270 Sixth Avenue, New York City.

J. J. Bregman, 1629 Broadway, New York City.

Saul Bornstein, 799 Seventh Avenue, New York City.

Gene Buck, 30 Rockefeller Plaza, New York City.

Irving Caesar, 1619 Broadway, New York City.

Walter Douglas, 1619 Broadway, New York City.

Max Dreyfus, 1619 Broadway, New York City.

George Fischer, 119 West 40th Street, New York City.

Walter Fischer, 56 Cooper Square, New York City.

Otto A. Harbach, 244 Orienta Avenue, Mamaroneck, New York.

Raymond Hubbell, Lambs Club, 130 West 44th Street, New York City.

[fol. 1439] Jerome Kern, 917 Whittier Drive, Beverly Hills, California.

Edgar Leslie, 59 West 46th Street, New York City.

George W. Meyer, 205 West 57th Street, New York City.

Jack Mills, 1619 Broadway, New York City.

Edwin H. Morris, 1250 Sixth Avenue, New York City.

Sigmund Romberg, 1023 No. Roxbury Drive, Beverly Hills, California.

Gustave Schirmer, 3 East 43rd Street, New York City.

Oley Speaks, 5 Riverside Drive, New York City.

Deems Taylor, Essex House, 160 Central Park South, New York City.

Will Von Tilzer, 1619 Broadway, New York City.

Joseph Young, 17 Myrtle Drive, Great Neck, New York.

Finance Committee

Louis Bernstein, Chairman, 1270 Sixth Avenue, New York City.

Fred E. Ahlert, 10 West 96th Street, New York City.

Otto A. Harbach, 244 Orienta Avenue, Mamaroneck, New York.

Membership Committee

Raymond Hubbell, Chairman, Lambs Club, 130 West 44th Street, New York City.

George Fischer, 119 West 40th Street, New York City.

Deems Taylor, Essex House, 160 Central Park South, New York City.

Will Von Tilzer, 1619 Broadway, New York City.

Joseph Young, 17 Myrtle Drive, Great Neck, New York.

Song Sheet Committee

Walter Douglas, Chairman, 1619 Broadway, New York City.

Irving Caesar, 1619 Broadway, New York City.

Louis Bernstein, 1270 Sixth Avenue, New York City.

Jack Mills, 1619 Broadway, New York City.

Edgar Leslie, 59 West 46th Street, New York City.

Sigmund Romberg, 1023 No. Roxbury Drive, Beverly Hills, California.

Publishers' Committee on Availability

Jack Bregman, Chairman, 1629 Broadway, New York City.

Gustave Schirmer, 3 East 43rd Street, New York City.

Walter Fischer, 56 Cooper Square, New York City.

Saul Bornstein, 799 Seventh Avenue, New York City.

Max Dreyfus, 1619 Broadway, New York City.

Louis Bernstein, 1270 Sixth Avenue, New York City.

Walter Douglas, 1619 Broadway, New York City.

Writers' Relief Committee

Joseph Young, Chairman, 17 Myrtle Drive, Great Neck, New York.

Oley Speaks, 5 Riverside Drive, New York City.

Gene Buck, 30 Rockefeller Plaza, New York City.

[fol. 1440] Publishers' Relief Committee

Louis Bernstein, Chairman, 1270 Sixth Avenue, New York City.

Max Dreyfus, 1619 Broadway, New York City.

Gustave Schirmer, 3 East 43rd Street, New York City.

Foreign Relations Committee

Walter Fischer, Chairman, 56 Cooper Square, New York City.

Saul H. Bornstein, 799 Seventh Avenue, New York City.

Sigmund Romberg, 1023 No. Roxbury Drive, Beverly Hills, California.

George W. Meyer, 205 West 57th Street, New York City.

Irving Caesar, 1619 Broadway, New York City.

Complaint Committee

Sigmund Romberg, Chairman, 1023 No. Roxbury Drive, Beverly Hills, California.

George Fischer, 119 West 40th Street, New York City.

Edgar Leslie, 59 West 46th Street, New York City.

Popular Publishers' Board of Appeal 1937

Edward B. Marks, Chairman, 1250 Sixth Avenue, New York City.

Henry Spitzer, 1270 Sixth Avenue, New York City.

Abe Olman, 799 Seventh Avenue, New York City.

Standard Publishers' Board of Appeal

W. Deane Preston, 88 St. Stephens Street, Boston, Massachusetts.

Max Winkler, Belwin, Inc., 43 West 23rd Street, New York City.

Dr. Renato Tasselli, G. Ricordi & Co., Inc., of New York, 12 West 45th Street, New York City.

Administrative Committee

L. C. Mills, Chairman, 30 Rockefeller Plaza, New York City.

Gene Buck, 30 Rockefeller Plaza, New York City.

Walter Fischer, 56 Cooper Square, New York City.

Louis Bernstein, 1270 Sixth Avenue, New York City.

Irving Caesar, 1612 Broadway, New York City.

Complainants object to the materiality and relevancy of the information requested as to the years prior to 1937.

Answering Interrogatory No. 40, which reads as follows:

Q. "State the name and address of each member of the Board of Directors of the American Society of Composers, Authors and Publishers for each year from the date of the organization of the Society to and including the year 1937."

[fol. 1441] A. This interrogatory has been answered in Interrogatory No. 39.

Complainants object to the other information requested in said interrogatory for the years prior to 1937, on the ground that the information requested is wholly immaterial and irrelevant to the present controversy and would needlessly conflict the issues herein.

Answering Interrogatory No. 41, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the original Articles of Association of the American Society of Composers, Authors and Publishers adopted when the Society was first organized, together with a verbatim copy of each addition and amendment thereto showing the date of the adoption thereof?"

A. Yes.

Answering Interrogatory No. 42, which reads as follows:

Q. "State the meaning and interpretation applied by the American Society of Composers, Authors and Publishers of the word 'regularly' as used in Article III, Section 1 of the Articles of Association of the Society, with respect to eligibility to membership of music publishers '*regularly* engaged for a period of not less than one year in the music publishing business'."

A. The meaning and interpretation is in accordance the dictionary definition of the word in question.

Answering Interrogatory No. 43, which reads as follows:

Q. "State the meaning and interpretation applied by the American Society of Composers, Authors and Publishers of the word 'regularly' as used in Article III, Section 1 of the Articles of Association of the Society, with respect to the eligibility to membership of composers and/or authors [fol. 1442] who '*regularly* practice the profession.'"

A. The meaning and interpretation is in accordance with the dictionary definition of the word in question.

Answering Interrogatory No. 44, which reads as follows:

Q. "State the meaning and interpretation applied by the American Society of Composers, Authors and Publishers to the words 'regularly published' as used in Article III, Section 1 of the Articles of Association of the Society, with respect to the eligibility to membership of composers and/or authors who 'have had not less than five works of his composition or writing *regularly published*.'"

A. The meaning and interpretation is in accordance with the dictionary definition of the word in question.

Answering Interrogatory No. 45, which reads as follows:

Q. "State the exact verbatim wording of the form of license contract entitled 'Operator's Broadcasting License for Newspaper-Owned Station' adopted by the American Society of Composers, Authors and Publishers on or about October 1, 1932, for licensing of music performance rights to radio broadcasting stations owned 51% or more by a newspaper."

A. Annexed hereto and marked Exhibit #7 is the verbatim copy of the form of license contract referred to in this interrogatory.

Answering Interrogatory No. 46, which reads as follows:

Q. "State the name, address and call letters of each radio broadcasting station in the State of Nebraska to which the American Society of Composers, Authors and Publishers has issued the license contract entitled 'Operator's Broadcasting License for Newspaper-Owned Station'."

A. Huse Publishing Company, Norfolk, Nebraska, call letters WJAG.

[fol. 1443] Answering Interrogatory No. 47, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all license contracts of the American Society of Composers, Authors and Publishers with radio broadcasting stations located in the State of Nebraska?"

A. Yes, subject to the Court's ruling as to relevancy and materiality.

Answering Interrogatory No. 48, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all license contracts of the American Society of Composers, Authors and Publishers with all licensees located in the State of Nebraska other than radio broadcasting stations?"

A. Yes, subject to the ruling by the Court as to relevancy and materiality.

Answering Interrogatory No. 49, which reads as follows:

Q. "State the amount of gross receipts of the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, derived from licenses issued to proprietors of hotels, restaurants, dance halls cabarets and all other places of amusement in the United States except motion picture theatres and radio broadcasting stations."

A. This interrogatory is objected to on the ground that the receipts of the American Society of Composers, Authors and Publishers from states other than Nebraska has no relevancy or materiality to this controversy, and that in any event the receipts from 1920 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within [fol. 1444] the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 50, which reads as follows:

Q. "State the amount of gross receipts of the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, derived from licenses issued to motion picture theatres in the United States."

A. This interrogatory is objected to on the ground that the receipts of the American Society of Composers, Authors and Publishers from states other than Nebraska has no relevancy or materiality to this controversy, and that in any event the receipts from 1920 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 51, which reads as follows:

Q. "State the amount of gross receipts of the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, derived from licenses issued to radio broadcasting stations in the United States."

A. This interrogatory is objected to on the ground that the receipts of the American Society of Composers, Authors and Publishers from states other than Nebraska has no relevancy or materiality to this controversy, and that in any event the receipts from 1920 to 1937 would serve no useful [fol. 1445] purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 52, which reads as follows:

Q. "State the total number of licenses issued by the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, to proprietors of hotels, restaurants, dance halls, cabarets and all other places of amusement in the United States except motion picture theatres and radio broadcasting stations."

A. This interrogatory is objected to on the ground that the number of licenses issued to users in states other than Nebraska by the American Society of Composers, Authors and Publishers has no relevancy or materiality to this controversy, and that in any event the number of licenses issued to users in states other than Nebraska from 1920 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 53, which reads as follows:

Q. "State the total number of licenses issued by the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, to motion picture theatres in the United States."

A. This interrogatory is objected to on the ground that [fol. 1446] the number of licenses issued to users in states other than Nebraska by the American Society of Composers, Authors and Publishers has no relevancy or materiality to this controversy, and that in any event the number of licenses issued to users in states other than Nebraska from 1920 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 54, which reads as follows:

Q. "State the total number of licenses issued by the American Society of Composers, Authors and Publishers for each year from 1920 to 1937, inclusive, to radio broad-

casting stations in the United States licensed under the Society's regular 'Operator's Broadcasting License.' "

A. This interrogatory is objected to on the ground that the number of licenses issued to users in states other than Nebraska by the American Society of Composers, Authors and Publishers has no relevancy or materiality to this controversy, and that in any event the number of licenses issued to users in states other than Nebraska from 1920 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 55, which reads as follows:

[fol. 1447] Q. "State the total number of licenses issued by the American Society of Composers, Authors and Publishers for each year from 1932 to 1937, inclusive, to radio broadcasting stations in the United States licensed under the Society's special 'Operator's Broadcasting License for Newspaper-Owned Station.' "

A. This interrogatory is objected to on the ground that the number of licenses issued to users in states other than Nebraska by the American Society of Composers, Authors and Publishers has no relevancy or materiality to this controversy, and that in any event the number of licenses issued to users in states other than Nebraska from 1932 to 1937 would serve no useful purpose and would merely becloud the issues in this case; that the purpose of this interrogatory is solely to annoy and harass the complainants and is oppressive and not within the scope of interrogatories as permitted by Rule 58 of the Federal Equity Rules.

Answering Interrogatory No. 56, which reads as follows:

Q. "State the schedule of license fees or rates required by the American Society of Composers, Authors and Publishers to be paid by hotels prior to the year 1928."

A. This interrogatory is objected to on the ground that schedule of license fees or rates paid prior to 1928 can have no bearing upon this controversy and is an attempt to introduce a collateral issue, and is not within the proper scope of interrogatories as defined by Equity Rule 58.

Answering Interrogatory No. 57, which reads as follows:

Q. "State the schedule of license fees or rates required [fol. 1448] by the American Society of Composers, Authors and Publishers to be paid by hotels after the year 1928 and prior to January 1, 1934."

A. This interrogatory is objected to on the ground that schedule of license fees or rates paid prior to 1934 can have no bearing upon this controversy and is an attempt to introduce a collateral issue, and is not within the proper scope of interrogatories as defined by Equity Rule 58.

Answering Interrogatory No. 58, which reads as follows:

Q. "State the revised schedule of license fees or rates for hotels issued by the American Society of Composers, Authors and Publishers as of approximately January 1934."

A. Annexed hereto and marked Exhibit 8, is a schedule of license fees paid by hotels in the State of Nebraska from the year 1921 to 1937, inclusive. Prior to 1921, no fees were paid in spite of the fact that the copyrighted music of members of the Society was constantly used in such hotels, and the hotels have been held liable for infringement for unauthorized performance for profit, of such music by the Supreme Court of the United States in the case of *Herbert v. Shanley*. When Prohibition was repealed in December 1933, there was a decided increase in the operations of the hotels throughout the country. A great many hotels that had never employed an orchestra, employed one for the first time. Many hotels employed two and even three orchestras. Some hotels provided artists in addition to orchestras, for the entertainment of their guests. The hotels opened bars and sold liquor on the premises and the music furnished to the patrons was an additional inducement to bring them in [fol. 1449] and to keep them there. The business of the hotels expanded considerably with the repeal of Prohibition and the Society felt justified in increasing the rates that had theretofore been paid by the hotels.

Even so, with the increased amounts, the rates paid by the hotels are pitifully small in comparison with the business done. For example, the two largest hotels in Omaha, the Fontenelle and the Paxton, pay \$360.00 per year. They employ orchestras and furnish music to their patrons both

at lunch and dinner time. For the privilege of performing the musical compositions licensed by the Society, these hotels are paying a little less than \$1.00 per day. I venture to say that there is no room in these two hotels that rents for \$1.00 per day, and that there is not a refreshment check in the dining room per person, less than \$1.00.

Answering Interrogatory No. 59, which reads as follows:

Q. "State the schedule of license fees or rates required by the American Society of Composers, Authors and Publishers to be paid by motion picture theatres prior to October 1, 1934."

A. The license fees paid by motion picture theatres in Nebraska prior to October 1, 1934, were as follows: Ten cents per seat per year except that if the theatre were open for only three days a week, the rate was five cents per seat per year.

In 1934, we thought that these rates needed revision. Many large and elaborate motion picture theatres had been built, some seating as many as 3,000 people. The program [fol. 1450] for entertainment in these theatres was most elaborate, consisting of ballet, vaudeville acts, revues, large orchestras and other forms of entertainment, in addition to the motion pictures, which of course, contained music as well.

The admission prices in these large theatres had gone up in the intervening years and in many cases they were as high as \$1.00. There was a readjustment of rates in 1934, for the purpose of equalizing the rates and taking some of the burden off the little fellow and putting it on the shoulders of the big fellow. The Society was justified in charging more than ten cents a seat in 1934 because there had been an average increase in the general admission of theatres over a period of years. They originally charged a nickle, but even the smaller theatres were charging 25¢ and 30¢ throughout the country, in 1934. Consequently, the new rates in 1934, which were made after discussions and negotiations had with the Motion Picture Exhibitors' Associations, were made as follows: ten cents per seat per year for theatres containing 800 or less; fifteen cents for theatres containing 801 to 1599 seats; twenty cents per seat above that; five cents per seat for all theatres operating only three days per week. Attached hereto and

marked Exhibit 9, is a schedule of license fees paid by the motion picture theatres in the State of Nebraska from 1923 down to 1937. The largest sum collected, as appears from a glance at this schedule, is \$560.00 per year. Even taking that theatre as a criterion, the proprietor pays at the rate of about \$1.60 a day. Of course, that is an exception [fol. 1451] tional theatre. A great majority of the theatres pay less than \$100.00 per year.

Answering Interrogatory No. 60, which reads as follows:

Q. "State the exact wording of the undated new schedule of fees or rates to be required of motion picture theatres prepared by the American Society of Composers, Authors and Publishers during the summer of 1934 captioned 'License Fee Tariff for Motion Picture Theatres (Effective on and after October 1, 1934)' and ending with the initials 'ECM:AWK'."

A. I have not located this particular document in the Society's file and am not personally familiar with the same, but will endeavor to identify such document if produced by defendant.

Answering Interrogatory No. 61, which reads as follows:

Q. "State the schedule of license fees or rates required by the American Society of Composers, Authors and Publishers to be paid by radio broadcasting stations prior to September 1, 1932."

A. From the commencement of the broadcasting industry in 1922, it was contended by broadcasters that no profit was made from radio broadcasting and indeed, that broadcasting stations actually operated at a loss. At first broadcasters refused to pay any royalties whatsoever for the broadcasting of their works, but after the Courts had decided in a number of cases that radio broadcasts were public performances for profit, the stations commenced paying for such performance but insisted upon paying at a rate that was rather nominal, in view of the tremendous number of copyrighted musical compositions performed by them.

Prior to 1925, the only broadcasting station in Nebraska [fol. 1452] which paid royalties to the Society was Station WOW in Omaha, paying a royalty of \$200.00 annually. In 1925, two additional stations commenced paying royalties,

the largest payment being \$500.00 annually by Station KMMJ, located at Clay Centre.

When radio definitely became a profitable industry and when the constant repetition of musical compositions by means of radio broadcasting, resulted in a serious decrease in sales of sheet music, it was felt that radio should pay a sum commensurate with the profit made by it, as well as for the injuries suffered by the copyrighted owners because of the reduction of income from other sources.

In 1926, a committee of broadcasters suggested to the Society, that license fees be based on the power of the stations as fixed by the United States Government licenses, and the number of hours of operation, regardless of whether or not compositions of the members of the Society were used during the entire period of operation. A contract was submitted to the Society by this committee of broadcasters, to be effective for three years and applicable not only to the members of the National Association of Broadcasters but to all broadcasters.

The proposal was not supported because of friction arising within the ranks of the broadcasters themselves. Stations with higher power in the less urban communities did not wish to pay the same rate as stations having the same power located in the more densely populated areas.

During this period licenses were being issued by the Society to various radio broadcasting stations for periods [fol. 1453] of one or two years at varying fees.

In 1929 a committee of the National Association of Broadcasters, met with representatives of the Society, and it was suggested that instead of the Society dealing with broadcasters individually, any grievance by a broadcaster be presented to the National Association of Broadcasters, which in turn would take it up with the Society.

The National Association of Broadcasters was informed of the rates paid by all of its members and distributed a list to all of its members, showing the amounts paid to the Society by each.

At this time the managing director of the National Association of Broadcasters suggested the following three factors to the Society as a basis for determining the rates:

- (1) the power input of a station;
- (2) the average number of hours of operation per week;

(3) the potential listening audience within the service range of the station.

In response to this suggestion, the Society replied on June 13, 1929—

"We have carefully noted the contents . . . and assure you that we will welcome any practicable plan, acceptable to all of the broadcasters for fixing a rate of license fees charged in respect of public performance of music copyrighted by our members, under some more definite and scientific formula than we have thus far found it possible to apply.

"Please therefore do not hesitate to present any suggestions which you may have . . ."

The broadcasters themselves were unable to agree upon this specific formula and as a result the situation regarding a uniform license for all remained unsettled.

In 1930, in a speech made before the 8th Annual Conference of the National Association of Broadcasters held at Cleveland, Ohio, William S. Hedges, President, states (at p. 7 of the printed minutes).

"The New York Office . . . has in many instances represented members in negotiations for license renewals with the American Society of Composers, Authors and Publishers, and has been in the majority of cases successful in securing fees that were mutually satisfactory . . ."

Hedges stated at Page 5:

"I believe we are getting closer to the time when a definite basis for fixing fees may be arrived at. In fact your Association has been working with that problem during the past year. Several formulae have been worked out but none of them has been completely satisfactory. Charges based upon card rates of broadcasting stations, which seems the most equitable plan, would have thrust a burden upon the smaller stations by increasing their fees and would have reduced the fees charged to the larger stations, which can better afford to pay even the exorbitant sums demanded."

On August 15, 1931, Mr. Loucks, representing the National Association of Broadcasters, advised the Society that the President of the National Association of Broadcasters had appointed a committee consisting of Messrs. Hedges,

Frank M. Russell, Henry A. Bellows and Loucks to meet representatives of the Society "to discuss a uniform basis for fixing music license fees."

The Broadcasters Committee did not agree as to what should be the proper norm or basis for determining uniform license rates for the use of music copyrighted by members of the Society. Conferences, discussions and negotiations were unsuccessful.

During 1931, 400 broadcasting stations sold \$60,000,000 worth of "time on the air" to advertisers. The profit resulting from this income showed very definitely that radio was [fol. 1455] no longer in its experimental stages. While the radio income increased rapidly, the income of copyright owners from sale of sheet music declined precipitously, due to the inroads made by radio. The broadcasters insisted on a uniform license for all stations negotiated through their trade association, the National Association of Broadcasters. Since all then existing licenses had been negotiated individually with the several broadcasting stations, and lacked uniformity, and since the payments thereunder were not commensurable with the rapid growth of the industry and its tremendous use of music, the Society notified the broadcasters that all contracts expiring after June 1, 1932, would be renewed upon a basis to be agreed upon. Since the broadcasters failed to agree upon a uniform rate, the Society proposed one. As a matter of fact negotiations looking toward a uniform rate were carried on over a period of several months, the broadcasters being represented by a Committee chosen by the National Association of Broadcasters. A rate was finally agreed upon, to become effective as to contracts expiring on and after September 1, 1932. The letter referred to in Interrogatory No. 62 was only one step in all these comprehensive negotiations, and would have no meaning apart from the other correspondence and conferences. Accordingly we object to its introduction at this time.

Annexed hereto is the Schedule of all fees paid by radio stations in Nebraska to and including the year 1937 as Exhibit "10".

Answering Interrogatory No. 62, which reads as follows: [fol. 1456] Q. "State the exact wording of the notification to radio broadcasting stations under date of April 11, 1932, by the American Society of Composers, Authors and Pub-

lishers that all licenses to broadcasting stations would be cancelled as of June 1, 1932, and the fees to be required by the Society on and after June 1, 1932."

A. This Interrogatory is objected to on the grounds set forth in answer to Interrogatory No. 61.

Answering Interrogatory No. 63, which reads as follows:

Q. "State the names or titles of all musical compositions and arrangements thereof, including copyrighted arrangements of musical compositions the melodies of which are in the public domain, entered or registered pursuant to the Copyright Laws of the United States with the Register of Copyrights in Washington, D. C., to which the American Society of Composers, Authors and Publishers now has control of the public performance rights in the United States.

"This Interrogatory No. 63 may be complied with by the complainant American Society of Composers, Authors and Publishers, either (a) by filing in response to said interrogatory (1) any printed or typewritten compilation which said Society now has of said names or titles of said musical compositions, together with an explanatory statement of the limitations of such compilation and (2) a statement of the approximate percentage which the total number of separate registrations of copyrights in such compilation bears to the total number of registrations of copyrighted musical compositions coming under the performance licenses issued by said Society, or (b) if said Society does not have such compilation, by furnishing (1) a statement of the total number of cards contained in the general card index of copyrighted musical compositions, including copyrighted arrangements the melodies of which are in the public domain, coming under the performance license of said Society which have been compiled by said Society to date, together with an explanatory statement of the limitations of such card index, (2) a statement of the approximate percentage which the total number of separate registrations of copyrights contained in such general card index bears to the total number of registrations of copyrighted musical compositions coming under the performance license issued by said Society, and (3) agreement to produce the aforesaid general card index at the time of the trial herein, without further subpoena or other judicial process."

A. Exhibit "11" is an accurate list of the musical compositions licensed by the American Society of Composers, [fol. 1457] Authors and Publishers, which have a substantial current use. It is difficult to say just what percentage this list bears to the entire number of compositions in the repertoire of the Society because it would not be feasible, and in fact, it would be impossible to make a list of those compositions which have no substantial use. Any attempt to make such a list, would cost far more than any possible income that might be derived from the public performance for profit of such compositions. Nevertheless, those compositions when performed, are subject to the Copyright Laws, and all copies of such compositions, contain copyright notices which inform users of such music, of the fact that such works are copyrighted, and the copyright notice also specifies who is the owner of the copyright. Thus it can be easily ascertained, whether the owner of such copyright is or is not a member of the Society.

[fol. 1458] SOUTHERN DISTRICT OF NEW YORK,
State of New York,
City and County of New York, ss:

Gene Buck, being duly sworn, deposes and says that he is one of the complainants in the within action; that he has read the foregoing answers to the defendants' interrogatories and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Gene Buck.

Sworn to before me this 31st day of March, 1938.
Belle G. Balston, Notary Public. Queens Co. Cert.
filed in N. Y. C. Comm. Expires March 30, 1940.

[fol. 1459] Gene Buck Interrogatories

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2621 N. Beachwood Drive
Hollywood, Calif.

Mr. Frank R. Adams
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Mr. B. D. Ackley
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Mr. R. Stanley Adams
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Magyar Szovegirok, Zenes-
zerzok es Zenemukiadok
Szovetkezete,
Gerloczy-Utca 3, 1, 6,
Budapest IV, Hungary.

Societa Italiana Degli Au-
tori ed Editori,
Via Valadier 37,
Rome, Italy.

Udruzenje Jugoslavenskih
Muzickih Autora,
Marulicé trg. 17/1,
Zagreb, Yugoslavia.

Norsk Komponistforenings
Internasjonale Musikkb-
yra,
Klingenberggaten 5,
Oslo, VII, Norway.

Sociedade de Escritores E
Compositores Teatrais
Portugueses,
Rua de S. Pedro de Alcan-
tara 45-1,
Lisbonne, Portugal.

Societatea Compozitorilor
Romani,
Strada Lipscani 110,
Bucarest 1, Rumania.

Sociedad General de Au-
tores de Espana,
Plaza de Canovas 4,
Madrid, Spain.

Foreningen Svenska Ton-
sattares Internationalla
Musikbyra,
Tegnerlunden 3,
Stockholm, Sweden.

Association Suisse Pour la
Représentation des Droits
d'Exécution,
Bahnhofstrasse 92,
Zurich, 1, Switzerland.

[fol. 1494]

DEFENDANTS EX. No. 61

G. L. Harman

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA, LINCOLN DIVISION

Equity #562

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, et al.,
Complainants,

against

HARRY R. SWANSON, as Secretary of State of Nebraska,
et al., Defendants.

Answering the interrogatories propounded by the defendants, Gustave Schirmer, Secretary of G. Schirmer, Inc., a corporation, makes answer to the following interrogatories, numbered 1 to 25 inclusive, as follows:

Answering Interrogatory No. 1, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by G. Schirmer, Inc., been licensed by G. Schirmer, Inc., to any motion picture producer for recording upon the sound track of a sound motion picture film between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 2, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by G. Schirmer, Inc., been licensed by [fol. 1495] any person, firm or corporation or association acting for and in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity to any motion picture producer for recording upon the sound track of a sound motion picture film between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 3, which reads as follows:

Q. "State the name and address of each person, firm, corporation or association acting in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity in the licensing of recording rights to motion picture producers at any

time between the years 1927 and 1937 inclusive and state the date the authority of such representative was created and, if it has been terminated, the date of the termination thereof."

A. E. C. Mills, 30 Rockefeller Plaza, New York City, October 2, 1926 to October 21, 1929;

John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 4, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 3 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of G. Schirmer, Inc.?"

A. Yes; subject to the Court's ruling upon materiality and relevancy.

[fol. 1496] Answering Interrogatory No. 5, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by G. Schirmer, Inc., using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the motion picture producer under the license?"

A. The contracts have varied from time to time with respect to different producers but some may contain clauses substantially similar to those in other contracts. A number of the contracts will be produced on the trial subject to the Court's ruling as to materiality and relevancy.

Answering Interrogatory No. 6, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into by G. Schirmer, Inc., with motion picture producers."

A. We annex herewith two such contracts as Exhibits 1 and 2.

Answering Interrogatory No. 7, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by any person, firm, corporation or association acting for and in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the motion picture producer under the license?"

A. Yes.

[fol. 1497] Answering Interrogatory No. 8, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with motion picture producers for and in behalf of G. Schirmer, Inc., by each of the agents and trustees designated in your answer to Interrogatory No. 3."

A. Annexed hereto as Exhibits 3, 4, 5 and 6 are forms of contracts generally in use by the agent and trustee with motion picture producers with respect to recording of musical compositions in motion pictures.

Answering Interrogatory No. 9, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by G. Schirmer, Inc., which is representative of the general or standard form of license contracts between G. Schirmer, Inc., and motion picture producers, and (b) a complete contract or license agreement entered into for and in behalf of G. Schirmer, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 3, which is representative of the general or standard form of license contracts between such agent or trustee and motion picture producers?"

A. Yes; in so far as such contracts may be said to be representative and in so far as they are in this defendant's

possession, subject to the ruling of the Court with respect to their relevancy and materiality. With regard to so much of this interrogatory as is designated as (b), we have already annexed in answer to Interrogatory No. 8, forms of contracts.

[fol. 1498] Answering Interrogatory No. 10, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, G. Schirmer, Inc.'s, complete copy of the license contract entered into by E. C. Mills as agent and trustee for music publishers including G. Schirmer, Inc., with Radio Corporation of American Phot-phone Company dated on or about September 5, 1928, together with the exhibits attached thereto and the supplements thereof, all of which were printed and bound in pamphlet form for the parties involved therein."

A. Yes, subject to the ruling of the Court with respect to materiality and relevancy.

Answering Interrogatory No. 11, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by G. Schirmer, Inc., been licensed by G. Schirmer, Inc., to any manufacturer for recording upon the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

A. Yes, but the term "sound track" ordinarily applies to recording of sound on film, whereas electrical transcriptions are not made on films.

Answering Interrogatory No. 12, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by G. Schirmer, Inc., been licensed by any person, firm, corporation or association acting for and in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity, to any manufacturer for recording upon the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

A. Yes.

[fol. 1499] Answering Interrogatory No. 13, which reads as follows:

Q. "State the name and address of each person, firm, corporation or association acting for and in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity, in the licensing of recording rights to manufacturers of electrical transcriptions at any time between the years 1930 to 1937 inclusive, and state the date the authority of such representative was created and, if it has been terminated the date of the termination thereof."

A. John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 14, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 13 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of G. Schirmer, Inc.?"

A. Yes; subject to the Court's ruling with respect to materiality and relevancy.

Answering Interrogatory No. 15, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by G. Schirmer, Inc., using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

[fol. 1500] A. No.

Answering Interrogatory No. 16, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into by G. Schirmer, Inc., with manufacturers of electrical transcriptions."

A. This has been answered by answer to Interrogatory No. 15.

Answering Interrogatory No. 17, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by any person, firm, corporation or association acting for and in behalf of G. Schirmer, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

A. Yes.

Answering Interrogatory No. 18, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with manufacturers of electrical transcriptions for and in behalf of G. Schirmer, Inc., by each of the agents or trustees designated in your answer to Interrogatory No. 13."

A. Annexed hereto as Exhibits 7, 8, 9 and 10 are forms of printed contracts which contain general or standard provisions.

[fol. 1501] Answering Interrogatory No. 19, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by G. Schirmer, Inc., which is representative of the general or standard form of license contracts between G. Schirmer, Inc., and manufacturers of electrical transcriptions, and (b) a complete contract or license agreement entered into for and in behalf of G. Schirmer, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 13 which is representative of the general or standard form of license contract between such agent or trustee and manufacturers of electrical transcriptions?"

A. There is no contract or license agreement between G. Schirmer, Inc., and manufacturers of electrical transcriptions. Such contracts are made in the form of license agreements between the agent and the trustee and manufacturers of electrical transcriptions in the form annexed

to Interrogatory No. 18; and with respect to that much of the interrogatory covered by subdivision (b), we will produce such complete contract upon the trial subject to the ruling of the Court with respect to relevancy and materiality.

Answering Interrogatory No. 20, which reads as follows:

Q. "Has G. Schirmer, Inc., entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. No.

[fol. 1502] Answering Interrogatory No. 21, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements entered into by G. Schirmer, Inc., with motion picture producers and manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. This is answered by the answer made to Interrogatory No. 20.

Answering Interrogatory No. 22, which reads as follows:

Q. "Has any person, firm, corporation or association acting for and in behalf of G. Schirmer, Inc., as agent or trustee, or acting as a common agent or trustee for G. Schirmer, Inc., and other owners of copyrighted musical compositions, entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes.

Answering Interrogatory No. 23, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements with motion picture producers and manufacturers of electrical transcriptions entered into by any agent or trustee acting in behalf of G. Schirmer, Inc., individually, or by any common agent or trustee acting in behalf of G. Schirmer, Inc., and other owners of copyrighted musical compositions, the terms and provisions of which general contracts or agreements are made applicable to recording licenses sub-[fol. 1503] sequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes; subject to the ruling of the Court with respect to the relevancy and materiality.

Answering Interrogatory No. 24, which reads as follows:

Q. "State the schedule or rate of license fees for each year from 1930 to 1937 inclusive required by G. Schirmer, Inc., or by any agent or trustee acting for and in behalf of G. Schirmer, Inc., to be paid by manufacturers of electrical transcriptions."

A. There are two types of licenses issued to manufacturers of electrical transcriptions: (a) For the manufacture of individual records of production numbers, fifty cents for each record manufactured, and for popular numbers, twenty-five cents for each record manufactured; (b) In the alternative, a manufacturer of transcriptions may secure a license to make any number of records of a particular composition on the payment of fifteen dollars for each master record manufactured (all other records being pressed from such master record).

Answering Interrogatory No. 25, which reads as follows:

Q. "State the name or title of each copyrighted musical composition and arrangement thereof owned by G. Schirmer, Inc., on the date of answering this interrogatory."

A. We annex hereto as Exhibits 11, 12 and 13 a partial list of names or titles of copyrighted musical compositions [fol. 1504] and arrangements thereof owned by G. Schirmer, Inc., on this date. It is impossible for us to furnish a complete list without the expenditure of very substantial sums

of money, a great amount of research work, engaging lawyers and contacting various parties who may have rights or interests in various compositions.

[fol. 1505] SOUTHERN DISTRICT OF NEW YORK,
State of New York,
City and County of New York, ss:

Gustave Schirmer, being duly sworn, deposes and says that he is the Secretary of G. Schirmer, Inc., one of the complainants herein; that he has read the foregoing answers to the defendants' interrogatories and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by G. Schirmer, Inc., is because the said G. Schirmer, Inc., is a corporation, and deponent an officer thereof, to wit its secretary.

Gustave Schirmer.

Sworn to before me this 1st day of April, 1938. Minerva D. Grey, Notary Public, New York Co. # 216. Com. expires March 30, 1940.

[fol. 1506]

EXHIBIT 1

New York City, N. Y.,
March 19, 1936.

Bennie F. Zeidman Productions, Ltd., Talisman Studios,
4516 Sunset Boulevard, Hollywood, California.

GENTLEMEN:

In consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, receipt of which is acknowledged, the undersigned does hereby give to Bennie F. Zeidman Productions, LTD., the non-exclusive, irrevocable right, license, privilege and authority to record, reproduce and perform publicly for profit in any manner, medium or form, in any country covered by this license, the musical composition hereinbelow set out, and to make copies of such recording and to import said copies of recording into

any country covered by this license, all in accordance with the terms, conditions and limitations hereinafter set out.

1. The composition covered by this license is:

"Agitato" By Hugo Riesenfeld.

2. The title of the motion picture with which the said musical composition is to be used is "Angels in White".

3. The type of use to be made of the musical composition is Background Instrumental, and the amount of uses to be made is two (2).

4. The license hereinabove set out is limited to the use of the musical composition in synchronism or timed-relation with the motion picture hereinabove specified.

5. The right to record the musical composition as covered by this agreement is conditioned upon the performance of the musical work in theatres having valid licenses from the American Society of Composers, Authors and Publishers, or any other performing rights society having jurisdiction in the territory in which the said musical composition is performed.

6. The territory covered by this license is the entire world.

7. The undersigned warrants that it is the copyright owner of the musical composition mentioned above and that it further has the right to grant the license contained herein.

8. It is specifically understood that this license is only for the rights mentioned above; all other rights and uses in and to the said musical compositions not herein specifically granted remain the property of the undersigned.

G. Schirmer, Inc., by Gustave Schirmer, Secretary.

[rol. 1507]

EXHIBIT 2

March 10th, 1937.

Paramount Pictures, Inc., 5451 Marathon Street, Hollywood, California.

GENTLEMEN:

In consideration of the sum of Five Hundred Dollars (\$500.00), receipt whereof is hereby acknowledged, the

undersigned, G. Schirmer, Inc., (hereinafter referred to as the "Publisher"), hereby gives and grants to you, your successors and assigns, the non-exclusive, irrevocable rights, licenses, privileges and authorities to use the title "Trees" and any variation thereof and any similar title, as the title of, and in *and in* connection with, a motion picture to be produced by or for you; and to record and photograph and to have recorded and photographed, mechanically and electrically, in any manner, medium, form or language throughout the world, any and all uses (dramatic and otherwise and unlimited as to kind and number) of the musical composition (including its title, words and music) entitled "Trees" by Oscar Rasbach and Joyce Kilmer, and any and all arrangements, adaptations and versions thereof, in any and all languages, in, for and in connection with said motion picture (whether or not it shall bear said title) and any trailers thereof, and to make copies of such recordings and photographs and to import such recordings, photographs and copies of such recordings and photographs into any part of the world, and to reproduce and perform publicly for profit or otherwise (and to license the reproduction and public performance for profit or otherwise of) said musical composition (including its title, words and music) in any arrangements, recordings and versions thereof, in any and all languages, throughout the world, in synchronism with said motion picture and any trailers thereof.

The right to use said musical composition, as herein granted to you, your successors and assigns, shall be deemed to include, but shall not be limited to, the right to use said musical composition (including its title, music and words) dramatically in and in connection with said motion picture as well as in synchronism or timed relation therewith, and to arrange, adapt and transpose said musical composition, in whole or in part, in such manner as you may deem necessary or desirable for the dramatic rendition thereof, and the right to perform said musical composition with such scenery, costumes, dialogue, spoken words and situations as you may desire for the purpose of dramatically presenting and performing said musical composition, in whole or in part and any number of times.

[fol. 1508] The right to perform said musical composition, as aforesaid, is conditioned upon the performance thereof in theatres having valid licenses from the American Society of Composers, Authors and Publishers or any other similar

performing rights society having jurisdiction in the territory in which said musical composition is performed.

The Publisher warrants only that it is the owner of the recording and dramatic rights herein granted and conveyed and that it has full right and authority to grant the right to use said title of said musical composition in, for and in connection with said motion picture as aforesaid, and this license is given without other warranty or recourse except for the Publisher's agreement to repay the consideration paid for this license if said warranty shall be breached; and the Publisher further reserves to itself all rights and uses in and to said musical composition not herein specifically granted.

This license is limited to one one-reel short subject.

G. Schirmer, Inc., by Gustave Schirmer, Secretary.
W.

[fol. 1509]

EXHIBIT 3

In consideration of the sum of — Dollars (\$—), receipt of which is hereby acknowledged, — (hereinafter referred to as the Publisher), hereby gives to —, 444 West 56th Street, New York City, its successors and assigns, the non-exclusive, irrevocable right and license, privilege and authority to record, in any manner, medium, form or language, in any country within the territory covered by this license, the words and music of the musical composition hereinbelow set out, and to make copies of such recordings and to import said recordings and/or copies of said recordings into any country within the territory covered by this license, and to perform said musical composition everywhere, all in accordance with the terms, conditions and limitations hereinafter set out.

1. The composition covered by this license is —, by —.

2. The title of the motion picture with which said musical composition is to be used is —.

3. The type of use to be made of the musical composition is —, and the amount of uses to be made is —.

4. The license hereinabove set out is limited to the use of said musical composition in synchronism or timed-rela-

tion with the motion picture hereinabove specified, and trailers thereof.

5. The right to record said musical composition as covered by this agreement is conditioned upon the performance of said musical composition in theatres having valid licenses from the American Society of Composers, Authors and Publishers, or any other performing rights society having jurisdiction in the territory in which said musical composition is performed.

6. The territory covered by this license is the entire world.

7. The undersigned warrants only that it is the owner of the recording rights herein conveyed, and this license is given without other warranty or recourse, except for the Publisher's agreement to repay the consideration paid for this license if said warranty shall be breached; and the Licensor further reserves to itself all rights and uses in and to the said musical composition not herein specifically granted.

—, —, Agent and Trustee.

[fol. 1510]

EXHIBIT 4

In consideration of the sum of — Dollars (\$—), receipt whereof is hereby acknowledged, — (hereinafter referred to as the Publisher), hereby gives to Paramount Pictures Inc., 1501 Broadway, New York City, its successors and assigns, the non-exclusive, irrevocable right and license, privilege, and authority to record, in any manner, medium, form, or language in any country within the territory covered by this license, the words and music of the musical composition hereinbelow set out, and to make copies of such recordings, and to import said recordings and/or copies of said recordings into any country within the territory covered by this license, and to perform said musical composition everywhere, all in accordance with the terms, conditions and limitations hereinafter set out.

1. The composition covered by this license is —, by —.

2. The title of the motion picture with which said musical composition is to be used is —.

3. The type of use to be made of the musical composition is —, and the amount of uses to be made is —.

4. The license hereinabove set out is limited to the use of said musical composition in synchronism or timed-relation with the motion picture hereinabove specified, and trailers thereof.

5. The right to perform said musical composition as covered by this agreement is conditioned upon the performance of said musical composition in theatres having valid licenses from the American Society of Composers, Authors and Publishers, or any other performing rights society having jurisdiction in the territory in which said musical composition is performed.

6. The territory covered by this license is the entire world.

7. The undersigned warrants only that it is the owner of the recording rights herein conveyed, and this license is given without other warranty or recourse, except for the publisher's agreement to repay the consideration paid for this license if said warranty shall be breached; and the Licensor further reserves to itself all rights and uses in and to said musical composition not herein specifically granted.
—, —, —, Agent and Trustee.

[fol. 1511]

EXHIBIT 5

In consideration of the sum of — Dollars (\$—), the undersigned does hereby give to —, the non-exclusive, irrevocable right, license, privilege and authority to record in any manner, medium or form, in any country covered by this license, the musical compositions hereinbelow set out, and to make copies of such recordings and to import said copies of recordings into any country covered by this license, all in accordance with the terms, conditions and limitations hereinafter set out.

1. The compositions covered by this license are: — — —.

2. The title of the motion picture with which the said musical compositions are to be used is — — —.

3. The type of use to be made of the musical composition is —, and the amount of uses to be made is —.

4. The license hereinabove set out is limited to the use of the musical compositions in synchronism or timed-relation with the motion picture hereinabove specified.

5. The right to record the musical compositions as covered by this agreement is conditioned upon the performance of the musical work in theatres having valid licenses from the American Society of Composers, Authors and Publishers, or any other performing rights society having jurisdiction in the territory in which the said musical compositions are performed.

6. The territory covered by this license is the entire world.

7. Except that the undersigned warrants that the principal for whom he is acting is the owner of the said musical composition, this license is given without warranty or recourse, and the licensor reserves to itself all rights and uses in and to the said musical compositions not herein specifically granted.

— —, Agent and Trustee.

[fol. 1512]

EXHIBIT 6

In consideration of the sum of — Dollars (\$—), receipt whereof is hereby acknowledged, — — (hereinafter referred to as the Publisher), hereby gives to Metro Goldwyn Mayer Corporation, 1540 Broadway, New York City, its successors and assigns, the non-exclusive, irrevocable right and license, privilege and authority to record, in any manner, medium, form or language, in any country within the territory covered by this license, the words and music of the musical composition hereinbelow set out, and to make copies of such recordings, and to import said recordings and/or copies of said recordings into any country within the territory covered by this license, and to perform said musical composition everywhere, all in accordance with the terms, conditions and limitations hereinafter set out.

1. The composition covered by this license is —, by — —.

2. The title of the motion picture with which said musical composition is to be used is —.

3. The type of use to be made of the musical composition is —, and the amount of uses to be made is —.

4. The license hereinabove set out is limited to the use of said musical composition in synchronism or timed-relation with the motion picture hereinabove specified, and trailers thereof.

5. The right to perform said musical composition as covered by this agreement is conditioned upon the performance of said musical composition in theatres having valid licenses from the American Society of Composers, Authors and Publishers, or any other performing rights society having jurisdiction in the territory in which said musical composition is performed.

6. The territory covered by this license is the entire world.

7. The undersigned warrants only that it is the owner of the recording rights herein conveyed, and this license is given without other warranty or recourse, except for the Publisher's agreement to repay the consideration paid for this license if said warranty shall be breached; and the Licensor further reserves to itself all rights and uses in and to the said musical composition not herein specifically granted.

— —, — —, Agent and Trustee.

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PAGE**

EXHIBIT NO. 7

(Sustaining Program License)

1. Pursuant to your license application dated the.....day of.....
 193... I hereby grant you the right, license, privilege and authority
 (a) To record the musical compositions hereinafter set out as part of the electrical transcrip-
 tion you desire to make of the program identified on your application under the title

(b) To make such arrangement, adaptation, and transcription of the said musical composi-
 tions as may be expedient or desirable to adapt the musical compositions to the purpose of the said
 electrical transcription, provided, however, that no arrangement, adaptation, or transcription made by
 you shall modify the character of any composition or be detrimental to the honor or reputation of the
 composer or publisher thereof;

(c) To record said musical composition either in whole or in part and either with or without
 the words thereof and in connection with such other musical compositions as you may desire, or in con-
 nection with any words, phrases, dialogues or other literary or dramatic material which you may select
 except that no right is hereby granted to change the lyrics of songs or to record lyrics in connection
 with musical compositions that are not songs;

(d) To make copies of such electrical transcription recordings;

(e) To perform by broadcast and to permit to be broadcasted the said records herein known
 as electrical transcription recordings, subject, however, to the express understanding and agreement
 that the said right to broadcast the compositions embodied in said recordings shall extend only to
 radio broadcast stations, which, at the time of such broadcast, hold valid licenses from the American
 Society of Composers, Authors and Publishers, or the Canadian Performing Rights Society, Ltd., per-
 mitting the public performance for profit of the said musical compositions, and subject to the terms
 of such licenses and with respect to any such broadcast performance, to permit the same to be received
 and reproduced publicly by means of radio receiving apparatus, provided the place where such recep-
 tion and public reproduction occurs is likewise licensed by the American Society of Composers, Authors
 and Publishers, or the Canadian Performing Rights Society, Ltd., to give public performances for profit
 of the said compositions, and subject to the terms of such licenses.

2. The license herein granted is intended to apply to the United States and Canada only and
 in order to make it effective as to this territory, the Licensor grants to you the right, license, privilege,
 and authority to import electrical transcriptions of the said recordings made in the United States into
 Canada, and the right, if at any time hereafter there may be such a right conferred by law, to import
 electrical transcriptions of said recordings made in Canada into the United States. The license
 hereby granted shall apply solely to the program set out in the application hereinabove referred to
 and for the radio stations listed in said application or as otherwise particularly noted, unless other-
 wise particularly provided for hereafter.

3. The license herein granted shall apply only to such electrical transcriptions as are made
 solely for sustaining program purposes. By sustaining programs is meant any program which is used
 by any radio station referred to in this agreement to fill in time which has not been or is not to be
 paid for by a sponsor, either local or national. The use of the program covered by this license for any-
 thing other than sustaining program purposes is a violation of the license.

4. The musical compositions covered by this license are the following:

5. In consideration of the license hereinabove granted, you agree to pay to me as follows: (a) For each master record manufactured by you embodying the above program, you will pay five (\$5.00) Dollars for each of the popular musical compositions embodied therein, and ten (\$10.00) Dollars for each production or restricted number embodied therein; each production number and restricted number to be especially designated on the license by an asterisk being placed before the name of the composition. The said fee to be paid within ten (10) days after the date of the license.

6. Each pressing from the master record manufactured pursuant hereto shall bear the name and address of the manufacturer and each identifying symbol as may be prescribed by the Agent and Trustee. As part of the license herein contained and as a consideration therefor, the licensee agrees to place the following notice on labels used in connection with all records or other devices manufactured pursuant hereto. "THIS RECORD IS MANUFACTURED UNDER WRITTEN LICENSE FROM JOHN G. PAINE, AGENT AND TRUSTEE, AND ALL RIGHTS OF ANY NATURE WHATSOEVER RELATIVE THERETO EXPIRE THE.....DAY OF193...."

7. This license expires six (6) months after the day and date first above written, and all rights of manufacture and of use of the master record or any derivatives thereof cease on that date.

8. The license herein is non-assignable and non-transferable, and is immediately voided by non-payment of the consideration, by the appointment of a receiver for the licensee, or by the bankruptcy of the licensee.

9. I further agree to fully indemnify and hold you harmless at all times against any and all demands, actions for infringement of copyright, judgments and/or recoveries by reason of any act done or use made hereunder by you or by any one acting for you under this agreement.

10. The License hereinabove granted is non-exclusive.

11. The application hereinabove referred to is hereby made a part of this license and the license thus becomes an agreement between the parties.

193...

IN WITNESS WHEREOF, I hereby set my hand and seal this.....day of.....

1513

John G. Paine

.....(L.S.)
Agent and Trustee

1. Pursuant to your license application dated the.....day of.....193...., I hereby grant you the right, license, privilege and authority:
 (a) To record the musical compositions hereinafter set out as part of the electrical transcription you desire to make of the program identified on your application under the title

(b) To make such arrangement, adaptation, and transcription of the said musical compositions as may be expedient or desirable to adapt the musical compositions to the purpose of the said electrical transcription, provided, however, that no arrangement, adaptation, or transcription made by you shall modify the character of any composition or be detrimental to the honor or reputation of the composer or publisher thereof;

(c) To record said musical composition (either in whole or in part and either with or without the words thereof and in connection with such other musical compositions as you may desire, or in connection with any words, phrases, dialogue or other literary or dramatic material which you may elect except that no right is hereby granted to change the lyrics of songs or to record lyrics in connection with musical compositions that are not songs);

(d) To make copies of such electrical transcription recordings;

(e) To perform by broadcast and to permit to be broadcasted the said records herein known as electrical transcription recordings, subject, however, to the express understanding and agreement that the said right to broadcast the compositions embodied in said recordings shall extend only to radio broadcast stations, which, at the time of such broadcast, hold valid licenses from the American Society of Composers, Authors and Publishers, or the Canadian Performing Rights Society, Ltd., permitting the public performance for profit of the said musical compositions, and subject to the terms of such license and with respect to any such broadcast performance, to permit the same to be received and reproduced publicly by means of radio receiving apparatus, provided the place where such reception and public reproduction occurs is likewise licensed by the American Society of Composers, Authors and Publishers, or the Canadian Performing Rights Society, Ltd., to give public performances for profit of the said compositions, and subject to the terms of such license.

2. The license herein granted is intended to apply to the United States and Canada only and in order to make it effective as to this territory, the Licensor grants to you the right, license, privilege, and authority to import electrical transcriptions of the said recordings made in the United States into Canada, and the right, if at any time hereafter there may be such a right conferred by law, to import electrical transcriptions of said recordings made in Canada into the United States. The license hereby granted shall apply solely to the program set out in the application hereinabove referred to and for the radio stations listed in said application unless otherwise particularly provided for hereafter and upon the completion of the program as specified in the said application, or as otherwise particularly noted hereafter, all electrical transcriptions manufactured pursuant to this license shall be destroyed, and whenever requested you agree to furnish adequate proof of such destruction.

3. The musical compositions covered by this license are the following:

4. In consideration of the license hereinabove granted, you agree to pay to me as follows: (a) For each electrical transcription manufactured embodying any of the aforesaid musical compositions, fifty cents (50c) for each such composition marked with an asterisk, and twenty five cents (25c) for each such composition not so marked; it being understood and agreed that a separate electrical transcription will be manufactured for each production or reproduction of the musical composition made, or failing to manufacture a separate electrical transcription for each such production or reproduction, then each such production or reproduction will, for the purpose of this agreement, be deemed to be a separate manufacture.

It is understood that only such electrical transcriptions which, in addition to being manufactured, shall be used for public performance for profit, shall be subject to the payment of the fee herein provided.

The company may grant sub-licenses hereunder with respect to the whole or any of the rights or licenses herein, provided, always, however, that this shall not relieve the Company from its obligation to make payments as herein provided. In no event, however, shall double payments be required to be made for any use hereunder, and it is understood that the Company shall have no liability hereunder for anything done or performed by the Company for or on behalf of any person, firm or corporation duly licensed by the Licensor for the same musical compositions and the same program.

(b) It is mutually understood and agreed that the payment provided for above shall cover any use of the musical compositions, continuous or non-continuous, so long as the same shall form part of one radio program, and providing that the playing time thereof shall not exceed three and one-half minutes (3½) for the so-called popular music, and three (3) minutes playing time in the case of all other music. In the event of the playing time exceeding the limit set out hereinabove, then each minute and one-half, or fraction thereof in excess of such limit shall be deemed to be one-half use, and such half use or fraction thereof shall be paid for with respect to compositions marked with an asterisk at the rate of twenty five cents (25c) and with respect to all other compositions at the rate of twelve and one-half cents (12½c) for each half use or fraction thereof in excess of the original playing period.

(c) You agree to furnish to me on the 20th day of each month a complete statement of all sums due to me under and by virtue of this license; said statement shall be certified to by the public accountant who regularly audits the books of the Company, or sworn to by a responsible officer of the Company, and shall be accompanied by check in payment of the amount shown to be due. You agree to make no outright sale of any of the electrical transcriptions manufactured pursuant to this license or under this license, nor make any other outright transfer of the said electrical transcription.

5. Each electrical transcription manufactured pursuant hereto shall bear the name and address of the manufacturer, and such identifying symbol as may be prescribed by the Agent and Trustee. As part of the license herein contained, and as a consideration therefor, the licensee agrees to place the following notice on label used in connection with all records or other devices manufactured pursuant hereto. "This record is manufactured under written license from John G. Paine, Agent and Trustee, and the record must be destroyed after program (s) thereon have been performed. Any further use of this record is a violation of the manufacturing license".

6. I further agree to fully indemnify and hold you harmless at all times against any and all demands, actions for infringement of copyright, judgments and/or recoveries by reason of any act done or use made hereunder by you or by any one acting for you under this agreement.

7. The license hereinabove granted is non-exclusive.

8. The application hereinabove referred to is hereby made a part of this license and the license thus becomes an agreement between the parties.

IN WITNESS WHEREOF, I hereby set my hand and seal this.....day of

.....193.....

1514

John G. Paine (L.S.)

100.... I hereby grant you this right, license, privilege and authority:
(a) To record the musical compositions hereinafter set out as part of the electrical transcription you desire to make of the program identified on your application under the title

(b) To make such arrangement, adaptation, and transcription of the said musical compositions as may be expedient or desirable to adapt the musical compositions to the purpose of the said electrical transcription, provided, however, that no arrangement, adaptation, or transcription made by you shall modify the character of any composition or be detrimental to the honor or reputation of the composer or publisher thereof;

(c) To record said musical compositions either in whole or in part and either with or without the words thereof and in connection with such other musical compositions as you may desire, or in connection with any words, phrases, dialogues or other literary or dramatic material which you may select except that no right is hereby granted to change the lyrics of songs or to record lyrics in connection with musical compositions that are not songs;

(d) To make copies of such electrical transcription recordings;

(e) To perform by broadcast and to permit to be rebroadcast the said records herein known as electrical transcription recordings, subject, however, to the express understanding and agreement that the said right to broadcast or rebroadcast the compositions embodied in said recordings shall extend only to radio broadcast stations, or other places of public entertainment, which, at the time of such broadcast, hold performance licenses from the copyright proprietor of the musical compositions embodied in the said electrical transcription or from the person, firm, association or corporation duly authorized to grant such licenses.

2. The license herein granted is intended to apply to the United States and Canada only and in order to make it effective as to this territory, the Licensor grants to you the right, license, privilege, and authority to import electrical transcriptions of the said recordings made in the United States into Canada, and the right, if at any time hereafter there may be such a right conferred by law, to import electrical transcriptions of said recordings made in Canada into the United States. The license hereby granted shall apply solely to the program set out in the application hereinabove referred to and for the radio stations listed in said application unless otherwise particularly provided for hereafter and upon the completion of the program as specified in the said application, or as otherwise particularly noted hereafter, all electrical transcriptions manufactured pursuant to this license shall be destroyed, and whenever requested you agree to furnish adequate proof of such destruction.

3. The musical compositions covered by this license are the following:

4. In consideration of the license hereinabove granted, you agree to pay to me as follows:

(a) For each electrical transcription manufactured embodying any of the aforesaid musical compositions, fifty cents (50c) for each such composition marked with an asterisk, and twenty five cents (25c) for each such composition not so marked; it being understood and agreed that a separate electrical transcription will be manufactured for each production or reproduction of the musical composition made, or failing to manufacture a separate electrical transcription for each such production or reproduction, then each such production or reproduction will, for the purpose of this agreement, be deemed to be a separate manufacture.

It is understood that only such electrical transcriptions which, in addition to being manufactured, shall be used for public performance for profit, shall be subject to the payment of the fee herein provided.

The company may grant sub-licenses hereunder with respect to the whole or any of the rights or licenses herein, provided, always, however, that this shall not relieve the Company from its obligation to make payments as herein provided. In no event, however, shall double payments be required to be made for any use hereunder, and it is understood that the Company shall have no liability hereunder for anything done or performed by the Company for or on behalf of any person, firm or corporation duly licensed by the Licensor for the same musical compositions and the same program.

(b) It is mutually understood and agreed that the payment provided for above shall cover any use of the musical compositions, continuous or non-continuous, so long as the same shall form part of one radio program, and providing that the playing time thereof shall not exceed three and one-half minutes (3½) for the so-called popular music, and three (3) minutes playing time in the case of all other music. In the event of the playing time exceeding the limit set out hereinabove, then each minute and one-half, or fraction thereof in excess of such limit shall be deemed to be one-half use, and such half use or fraction thereof shall be paid for with respect to compositions marked with an asterisk at the rate of twenty five cents (25c) and with respect to all other compositions at the rate of twelve and one-half cents (12½c) for each half use or fraction thereof in excess of the original playing period.

(c) You agree to furnish to me on the 30th day of each month a complete statement of all sums due to me under and by virtue of this license; said statement shall be certified to by the public accountant who regularly audits the books of the Company, or sworn to by a responsible officer of the Company, and shall be accompanied by check in payment of the amount shown to be due. You agree to make no outright sale of any of the electrical transcriptions manufactured pursuant to this license or under the license, nor make any other outright transfer of the said electrical transcription.

5. Each electrical transcription manufactured pursuant hereto shall bear the same and address of the manufacturer, and such identifying symbol as may be prescribed by the Agent and Trustee. As part of the license herein contained, and as a consideration therefor, the licensee agrees to place the following notice on label used in connection with all records or other devices manufactured pursuant hereto. "This record is manufactured under written license from Harry Fox, Agent and Trustee, and the record must be destroyed after program (s) thereon have been performed. Any further use of this record is a violation of the manufacturing license."

6. I further agree to fully indemnify and hold you harmless at all times against any and all demands, actions for infringement of copyright, judgments and/or recoveries by reason of any act done or use made hereunder by you or by any one acting for you under this agreement.

7. The license hereinabove granted is non-exclusive.

8. The application hereinabove referred to is hereby made a part of this license and the license thus becomes an agreement between the parties.

IN WITNESS WHEREOF, I hereby set my hand and seal this.....day of

.....193.....

1515

Harry Fox (L.S.)
Agent and Trustee

1. Pursue to your license application the date at which appears in Schedule A, on the reverse side hereof, each Schedule B incorporated herein and made part hereof, I, on behalf of the Publisher or Publishers named in said Schedule A hereby grant you the right, license, privilege and authority:

(a) To record the musical composition or compositions hereinafter set out in the aforementioned Schedule A as part of the electrical transcription you desire to make of the program identified on your application and specified in the aforementioned Schedule A;

(b) To make such arrangement, adaptation and transposition of the said musical composition or compositions as may be expedient or desirable to adapt to the purpose of the said electrical transcription, provided, however, that no arrangement, adaptation or transposition made by you shall modify the character of any composition or be detrimental to the honor or reputation of the composer or publisher thereof, and provided further that any and all property rights in or to or arising out of any such arrangement, adaptation, interpretation or transposition and all variations contained therein shall belong to the publisher;

(c) To record said musical composition or compositions either in whole or in part and either with or without the words thereof and in connection with such other musical compositions as you may desire, or in connection with any words, phrases, dialogue or other literary or dramatic material which you may elect except that no right is hereby granted to change the lyrics of songs or to record lyrics in connection with musical compositions that are not songs;

(d) To make copies of such electrical transcription recordings; and for all purposes hereunder the original and each copy thereof made by you shall be considered a separate electrical transcription and shall be referred to herein as an "electrical transcription";

(e) To perform by broadcast and to permit to be rebroadcast the said records herein known as electrical transcriptions, subject, however, to the express understanding and agreement that the said right to broadcast or rebroadcast the compositions embodied in said electrical transcriptions shall extend only to radio broadcast stations, or other places of public entertainment, which, at the time of such broadcast, hold performance licenses from the copyright proprietor of the musical compositions embodied in the said electrical transcription or from the person, firm, association or corporation duly authorized to grant such licenses.

2. The license herein granted is intended to apply to the United States and Canada only and in order to make it effective as to this territory, you are hereby given the right, license, privilege, and authority to import electrical transcriptions made in the United States into Canada, and the right, if at any time hereafter there may be such a right conferred by law, to import electrical transcriptions made in Canada into the United States. The license hereby granted shall apply solely to the particular program or programs set out in the application hereinabove referred to and for the radio station or stations listed in said application unless otherwise particularly provided for hereafter in writing and upon the completion of the program or programs as specified in the said application, or as otherwise particularly noted hereafter, all electrical transcriptions manufactured pursuant to this license shall be destroyed, and whenever requested you agree to furnish adequate proof of such destruction.

3. The musical compositions covered by this license are enumerated in the aforementioned Schedule A.

4. In consideration of the license hereinabove granted, you agree to pay to me as Agent and Trustee, as follows:

(a) For each electrical transcription manufactured embodying any of the musical compositions enumerated in the aforementioned Schedule A fifty cents (50c) for each such composition marked with an asterisk, and twenty five cents (25c) for each such composition not so marked; it being understood and agreed that a separate electrical transcription will be manufactured for each production or reproduction of the musical composition made, or failing to manufacture a separate electrical transcription for each such production or reproduction, then each such production or reproduction will, for the purpose of this agreement be deemed to be a separate manufacture.

It is understood that only such electrical transcriptions which, in addition to being manufactured, shall be used for public performance for profit, shall be subject to the payment of the fee herein provided.

You may grant sublicenses hereunder with respect to the whole or any of the rights or licenses herein, provided always however, that they shall not relieve you from your obligation to make payments as herein provided. In no event, however, shall double payments be required to be made for or used hereunder, and it is understood that you shall not be liable hereunder for anything done or performed by you for or on behalf of any person, firm or corporation duly licensed by the publisher or publishers for the same musical compositions upon the same program.

(b) It is mutually understood and agreed that the payment provided for above shall cover any use of the musical compositions, continuous or non-continuous, so long as the same shall form part of one radio program, and providing that the playing time thereof shall not exceed three and one-half minutes (3½) for the so-called popular music, and three (3) minutes playing time in the case of all other music. In the event of the playing time exceeding the limit set out hereinabove, then each minute and one-half, or fraction thereof in excess of such limit shall be deemed to be one-half use, and such half use or fraction thereof shall be paid for with respect to compositions marked with an asterisk at the rate of twenty five cents (25c) and with respect to all other compositions at the rate of twelve and one-half cents (12½c) for each half use or fraction thereof in excess of the original playing period.

(c) You agree to furnish to me on the 20th day of each month a complete statement of all sums due to me under and by virtue of this license; said statement shall be certified to by the public accountant who regularly audits your books or sworn to by one of your responsible officers and shall be accompanied by a check in payment of the amount shown to be due. You agree to make no outright sale of any of the electrical transcriptions manufactured pursuant to this license or under this license nor to make any other outright transfer of the said electrical transcriptions.

5. Each electrical transcription record manufactured pursuant hereto shall bear the name and address of the manufacturer, and such identifying symbol as may be prescribed by me as Agent and Trustee. As a condition to the license herein contained and as a consideration therefore you agree to place the following notice on the label used in connection with all records or other devices manufactured pursuant hereto: "This record is manufactured under written license from Harry Fox, Agent and Trustee, and the record must be destroyed after the program or programs thereon have been performed. Any other further or different use of this record from that expressly authorized hereby is a violation of the manufacturing license."

6. I further agree on behalf of my principal or principals to hold you harmless at all times against any and all judgments or recoveries in actions for infringements of copyrights by reason of any act done or use made hereunder by you or anyone acting for you under this license.

7. This license is given without warranty other than that the publisher or publishers have the right to grant the same. You agree to check this license, including the aforementioned Schedule A, with your records and application to be certain that every musical composition recorded is properly licensed hereby, as any error herein will not be rectified unless written notice thereof is received by me within thirty days from the date hereof as appears in the aforementioned Schedule A. If there be an error or mistake in the within license, including the aforementioned Schedule A, and said error shall be the result in whole or in part of the insufficiency or inadequacy of the information given in your application, or if such mistake is not called to my attention within thirty days as aforesaid, there shall be no liability whatsoever to you. However, in no event whatsoever shall the publisher or publishers be liable to you for any reason except to the extent of the return of the fee or a proportionate part thereof paid by you for this license.

8. This license is non-exclusive.

9. Dramatic and so-called "grand rights" of the musical compositions hereby licensed are expressly excluded from the operation of this license.

10. This license is granted to you subject to the condition, which, you, by the acceptance hereof, expressly recognize and confirm, that the recording by you for the purpose of electrical transcription as hereinbefore set forth, does not come within the purview of Section 1 (e) of the Copyright Law of the United States (being the Act of March 4, 1909, as amended) insofar as that section relates to parts of instruments serving to reproduce musical works mechanically.

11. Your application herein referred to is hereby made a part of this license and such application together with this license, including Schedule A, shall constitute the entire agreement between us.

IN WITNESS WHEREOF I hereby set my hand and seal on the date appearing in the aforementioned Schedule A.

*Note: This is a
proof of the new form
effective after 1/1/38. 1516*

Harry Fox

SCHEDULE A

(1) In accordance with your application dated the day of
193....., the annexed license covers the following musical compositions:

TITLE

COMPOSER

AUTHOR

PUBLISHER

(2) The program which has been identified by you in your application and for which this license applies is:

In all respects, this schedule is incorporated in and is subject to every term and condition contained on the reverse side hereof.

Dated:

Harry J. J.

1517

Agent and Trustee

989

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PAGE**

[fol. 1518]

DEFENDANT'S EXHIBIT No. 58

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA, LINCOLN DIVISION

Equity #562

GENE BUCK, individually and as President of the American
Society of Composers, Authors and Publishers, et al.,
Complainants,

AGAINST

HARRY R. SWANSON, as Secretary of State of Nebraska, et al.,
Defendants.

ANSWERING the interrogatories propounded by the defend-
ants, Walter S. Fischer, President of Carl Fischer, Inc., a
corporation, makes answer to the following interrogatories,
numbered 1 to 25, inclusive, as follows:

Answering Interrogatory No. 1, which reads as follows:

Q. "Have any of the copyrighted musical compositions
owned or controlled by Carl Fischer, Inc., been licensed by
Carl Fischer, Inc., to any motion picture producer for re-
cording upon the sound track of a sound motion picture film
between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 2, which reads as follows:

Q. "Have any of the copyrighted musical compositions
owned or controlled by Carl Fischer, Inc., been li-
[fol. 1519] censed by any person, firm or corporation or as-
sociation acting for and in behalf of Carl Fischer, Inc., as
agent, trustee or similar capacity, to any motion picture pro-
ducer for recording upon the sound track of a sound motion
picture film between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 3, which reads as follows:

Q. "State the name and address of each person, firm,
corporation or association acting in behalf of Carl Fischer,
Inc., as agent, trustee or similar capacity in the licensing

of recording rights to motion picture producers at any time between the years 1927 and 1937 inclusive and state the date the authority of such representative was created and, if it has been terminated, the date of the termination thereof."

A. E. C. Mills, 30 Rockefeller Plaza, New York City, October 2, 1926 to October 21, 1929;

John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 4, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 3 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of Carl Fischer, Inc.?"

A. Yes; subject to the Court's ruling upon materiality and relevancy.

[fol. 1520] Answering Interrogatory No. 5, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by Carl Fischer, Inc., using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the motion picture producer under the license?"

A. The contracts have varied from time to time with respect to different producers but some may contain clauses substantially similar to those in other contracts. A number of the contracts will be produced on the trial subject to the Court's ruling as to materiality and relevancy.

Answering Interrogatory No. 6, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into by Carl Fischer, Inc., with motion picture producers."

A. We annex herewith two such contracts as Exhibits 1 and 2.

Answering Interrogatory No. 7, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by any person, firm, corporation or association acting for and in behalf of Carl Fischer, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the motion picture producer under the license?"

A. Yes.

[fol. 1521] Answering Interrogatory No. 8, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with motion picture producers for and in behalf of Carl Fischer, Inc., by each of the agents and trustees designated in your answer to Interrogatory No. 3."

A. Annexed hereto as Exhibits 3, 4, 5 and 6 are forms of contracts generally in use by the agent and trustee with motion picture producers with respect to recording of musical compositions in motion pictures.

Answering Interrogatory No. 9, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by Carl Fischer, Inc., which is representative of the general or standard form of license contracts between Carl Fischer, Inc., and motion picture producers, and (b) a complete contract or license agreement entered into for and in behalf of Carl Fischer, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 3, which is representative of the general or standard form of license contracts between such agent or trustee and motion picture producers?"

A. Yes; in so far as such contracts may be said to be representative and in so far as they are in this defendant's

possession, subject to the ruling of the Court with respect to their relevancy and materiality. With regard to so much of this interrogatory as is designated as (b), we have already annexed in answer to Interrogatory No. 8, forms of contracts.

[fol. 1522] Answering Interrogatory No. 10, which read as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, Carl Fischer, Inc., 's complete copy of the license contract entered into by E. C. Mills as agent and trustee for music publishers including Carl Fischer, Inc., with Radio Corporation of American Phot-phone Company dated on or about September 5, 1928, together with the exhibits attached thereto and the supplements thereof, all of which were printed and bound in pamphlet form for the parties involved therein."

A. Yes, subject to the ruling of the Court with respect to materiality and relevancy.

Answering Interrogatory No. 11, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by Carl Fischer, Inc., been licensed by Carl Fischer, Inc., to any manufacturer for recording upon the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

A. Yes, but the term "sound track" ordinarily applies to recording of sound on film, whereas electrical transcriptions are not made on films.

Answering Interrogatory No. 12, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by Carl Fischer, Inc., been licensed by any person, firm, corporation or association acting for and in behalf of Carl Fischer, Inc., as agent, trustee or similar capacity, to any manufacturer for recording upon the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

A. Yes.

[fol. 1523] Answering Interrogatory No. 13, which reads as follows:

Q. "State the name and address of each person, firm, corporation or association acting for and in behalf of Carl Fischer, Inc., as agent, trustee or similar capacity, in the licensing of recording rights to manufacturers of electrical transcriptions at any time between the years 1930 to 1937 inclusive, and state the date the authority of such representative was created and, if it has been terminated, the date of the termination thereof."

A. John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 14, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 13 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of Carl Fischer, Inc.?"

A. Yes; subject to the Court's ruling with respect to materiality and relevancy.

Answering Interrogatory No. 15, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by Carl Fischer, Inc., using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

[fol. 1524] A. No.

Answering Interrogatory No. 16, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into by Carl Fischer, Inc., with manufacturers of electrical transcriptions."

A. This has been answered by answer to Interrogatory No. 15.

Answering Interrogatory No. 17, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by any person, firm, corporation or association acting for and in behalf of Carl Fischer, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

A. Yes.

Answering Interrogatory No. 18, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with manufacturers of electrical transcriptions for and in behalf of Carl Fischer, Inc., by each of the agents or trustees designated in your answer to Interrogatory No. 13."

A. Annexed hereto as Exhibits 7, 8, 9 and 10 are forms of printed contracts which contain general or standard provisions.

[fol. 1525] Answering Interrogatory No. 19, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by Carl Fischer, Inc., which is representative of the general or standard form of license contracts between Carl Fischer, Inc., and manufacturers of electrical transcriptions, and (b) a complete contract or license agreement entered into for and in behalf of Carl Fischer, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 13 which is representative of the general or standard form of license contract between such agent or trustee and manufacturers of electrical transcriptions?"

A. There is no contract or license agreement between Carl Fischer, Inc., and manufacturers of electrical transcriptions. Such contracts are made in the form of license agreements between the agent and trustee and manufacturers of electrical transcriptions in the form annexed to Interrogatory No. 18; and with respect to that much of the

Interrogatory covered by subdivision (b), we will produce such complete contract upon the trial subject to the ruling of the Court with respect to relevancy and materiality.

Answering Interrogatory No. 20, which reads as follows:

Q. "Has Carl Fischer, Inc., entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. No.

[fol. 1526] Answering Interrogatory No. 21, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements entered into by Carl Fischer, Inc., with motion picture producers and manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. This is answered by the answer made to Interrogatory No. 20.

Answering Interrogatory No. 22, which reads as follows:

Q. "Has any person, firm, corporation or association acting for and in behalf of Carl Fischer, Inc., as agent or trustee, or acting as a common agent or trustee for Carl Fischer, Inc., and other owners of copyrighted musical compositions, entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes.

Answering Interrogatory No. 23, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements with motion picture producers and manufacturers of electrical transcriptions entered into by any agent or trustee acting in behalf of Carl Fischer, Inc., individually, or by any common agent or trustee acting in behalf of Carl Fischer, Inc., and other owners of copyrighted musical compositions, the terms and provisions of which general contracts or agreements are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes; subject to the ruling of the Court with respect to the relevancy and materiality.

Answering Interrogatory No. 24, which reads as follows:

Q. "State the schedule or rate of license fees for each year from 1930 to 1937 inclusive required by Carl Fischer, Inc., or by any agent or trustee acting for and in behalf of Carl Fischer, Inc., to be paid by manufacturers of electrical transcriptions."

A. There are two types of licenses issued to manufacturers of electrical transcriptions: (a) For the manufacture of individual records of production numbers, fifty cents for each record manufactured, and for popular numbers, twenty-five cents for each record manufactured; (b) In the alternative, a manufacturer of transcriptions may secure a license to make any number of records of a particular composition on the payment of fifteen dollars for each master record manufactured (all other records being pressed from such master record).

Answering Interrogatory No. 25, which reads as follows:

Q. "State the name or title of each copyrighted musical composition and arrangement thereof owned by Carl Fischer, Inc., on the date of answering this interrogatory."

A. We annex hereto as Exhibit 11 a partial list of names or titles of copyrighted musical compositions and arrangements thereof owned by Carl Fischer, Inc., on this date. It is impossible for us to furnish a complete list

without the expenditure of very substantial sums of money, a great amount of research work, engaging lawyers and contacting various parties who may have rights or interest in various compositions.

[fol. 1529] SOUTHERN DISTRICT OF NEW YORK,

State of New York,
City and County of New York, ss:

Walter S. Fischer, being duly sworn, deposes and says that he is the president of Carl Fischer, Inc., one of the complainants herein; that he has read the foregoing answers to the defendants' interrogatories and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by Carl Fischer, Inc., is because said Carl Fischer, Inc., is a corporation, and deponent an officer thereof to wit its president.

Walter S. Fischer.

Sworn to before me this 1st day of April, 1938. Godfrey Cohn, Notary Public, New York Co. #115.
Term expires March 30, 1939.

[fol. 1530]

EXHIBIT 1

Copy

FWT.

January 30th, 1932.

Paramount Publix Corporation, 1501 Broadway, New York City.

DEAR SIRS:

The undersigned, Carl Fischer, Inc. in consideration of the sum of Fifty (\$50.00) Dollars, receipt of which is hereby acknowledged, hereby grants to you the non-exclusive, irrevocable right and license to record mechanically and/or

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electrically the words and/or music of one chorus of the composition entitled University of Maine Stein Song, (various arrangements of which have been published by the undersigned) an arrangement of which said composition by Rudy Vallee was registered for copyright in the Copyright Office of the United States in the name of the undersigned on February 25th, 1930, No. E:13,772, together with the right to make duplicate copies of such records and to reproduce and perform publicly for profit any arrangement, recording or version of said chorus of said composition in synchronism with a screen song cartoon entitled Rudy Vallee Melodies, and in connection with the exhibition and exploitation thereof throughout the world.

The right to use above said musical composition in the United States of America is subject to the payment by you of any license fees payable to the American Society of Composers, Authors and Publishers.

The undersigned hereby warrants that it has full right and authority to grant the rights hereby granted.

All rights not herein granted are reserved to the undersigned.

Carl Fischer, Inc., by — — —

[fol. 1531]

EXHIBIT 2

Copy

May 8, 1930.

Paramount Publix Corporation, 1501 Broadway, New York, N. Y.

GENTLEMEN:

The undersigned, Carl Fischer, Inc., in consideration of the sum of Three Hundred Fifty (\$350) Dollars, receipt of which is hereby acknowledged, without warranty and without recourse does hereby grant to you the non-exclusive, irrevocable license to produce, distribute and exhibit a motion picture cartoon of the Rudy Vallee arrangement of the musical composition entitled "Stein Song" under the title of said musical composition, and in connection therewith to photograph and record and reproduce by electrical or mechanical means the title, words and music of said composi-

tion, in whole or in part, and to use same in synchronism with said song cartoon and to exhibit same and reproduce the records thereof throughout the world.

All rights not herein granted are reserved unto the undersigned.

Very truly yours, Carl Fischer, Inc., by — —.

Consented to and approved: Paramount Publix Corporation, by — —.

[fol. 1532]

EXHIBIT 1

Copy

FWT.

January 30th, 1932.

Paramount Publix Corporation, 1501 Broadway, New York City.

DEAR SIRs:

The undersigned, Carl Fischer, Inc. in consideration of the sum of Fifty (\$50.00) Dollars, receipt of which is hereby acknowledged, hereby grants to you the non-exclusive, irrevocable right and license to record mechanically and/or electrically the words and/or music of one chorus of the composition entitled University of Maine Stein Song, (various arrangements of which have been published by the undersigned) an arrangement of which said composition by Rudy Vallee was registered for copyright in the Copyright Office of the United States in the name of the undersigned on February 25th, 1930, No. E:13,772, together with the right to make duplicate copies of such records and to reproduce and perform publicly for profit any arrangement, recording or version of said chorus of said composition in synchronism with a screen song cartoon entitled Rudy Vallee Melodies, and in connection with the exhibition and exploitation thereof throughout the world.

The right to use above said musical composition in the United States of America is subject to the payment by you of any license fees payable to the American Society of Composers, Authors and Publishers.

The undersigned hereby warrants that it has full right and authority to grant the rights hereby granted.

All rights not herein granted are reserved to the undersigned.

Carl Fischer, Inc., by — —.

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[fol. 1533]

EXHIBIT 2

Copy

May 8, 1930.

Paramount Publix Corporation, 1501 Broadway, New York,
N. Y.

GENTLEMEN:

The undersigned, Carl Fischer, Inc., in consideration of the sum of Three Hundred Fifty (\$350) Dollars, receipt of which is hereby acknowledged, without warranty and without recourse does hereby grant to you the non-exclusive, irrevocable license to produce, distribute and exhibit a motion picture cartoon of the Rudy Vallee arrangement of the musical composition entitled "Stein Song" under the title of said musical composition, and in connection therewith to photograph and record and reproduce by electrical or mechanical means the title, words and music of said composition, in whole or in part, and to use same in synchronism with said song cartoon and to exhibit same and reproduce the records thereof throughout the world.

All rights not herein granted are reserved unto the undersigned.

Very truly yours, Carl Fischer, Inc., by — — —.

Consented to and approved. Paramount Publix Corporation, by — — —.

[fol. 1534] EXHIBITS 3-6, Inclusive

Exhibits 3, 4, 5 and 6 answering Interrogatory No. 8, are identical with Exhibits 3, 4, 5 and 6 annexed to the answers of Gustave Schirmer, Secretary of G. Schirmer, Inc.

[fol. 1535] EXHIBITS 7-10, Inclusive

Exhibits 7, 8, 9 and 10 answering Interrogatory No. 18, are identical with Exhibits 7, 8, 9 and 10 annexed to the answers of Gustave Schirmer, Secretary of G. Schirmer, Inc.

[fol. 1536]

DEFENDANTS' EXHIBIT No. 59

G. L. Harman

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, LINCOLN DIVISION

Equity. #562

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, et al.,
Complainants,

against

HARRY R. SWANSON, as Secretary of State of Nebraska, et al.,
Defendants

Answering the interrogatories propounded by the defendants, Saul H. Bornstein, Treasurer of Irving Berlin, Inc., a corporation, makes answer to the following interrogatories, numbered 1 to 25, inclusive, as follows:

Answering Interrogatory No. 1, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by Irving Berlin, Inc., been licensed by Irving Berlin, Inc., to any motion picture producer for recording upon the sound track of a sound motion picture film between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 2, which reads as follows:

[fol. 1537] Q. "Have any of the copyrighted musical compositions owned or controlled by Irving Berlin, Inc., been licensed by any person, firm or corporation or association acting for and in behalf of Irving Berlin, Inc., as agent, trustee or similar capacity, to any motion picture producer for recording upon the sound track of a sound motion picture film between the years 1927 and 1937 inclusive?"

A. Yes.

Answering Interrogatory No. 3, which reads as follows:

Q. "State the name and address of each person, firm, corporation or association acting in behalf of Irving Ber-

lin, Inc., as agent, trustee or similar capacity in the licensing of recording rights to motion picture producers at any time between the years 1927 and 1937 inclusive and state the date the authority of such representative was created and, if it has been terminated, the date of the termination thereof."

A. E. C. Mills, 30 Rockefeller Plaza, New York City, October 2, 1926 to October 21, 1929;

John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 4, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 3 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of Irving Berlin, Inc.

A. Yes; subject to the Court's ruling upon materiality [fol. 1538] and relevancy.

Answering Interrogatory No. 5, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by Irving Berlin, Inc., using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the motion picture producer under the license?"

A. The contracts have varied from time to time with respect to different producers but some may contain clauses substantially similar to those in other contracts. A number of the contracts will be produced on the trial subject to the Court's ruling as to materiality and relevancy.

Answering Interrogatory No. 6, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording

contracts entered into by Irving Berlin, Inc., with motion picture producers."

A. We annex herewith two such contracts as Exhibits 1 and 2.

Answering Interrogatory No. 7, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of sound motion picture films been entered into by any person, firm, corporation or association acting for and in behalf of Irving Berlin, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed [fol. 1539] upon the motion picture producer under the license?"

A. Yes.

Answering Interrogatory No. 8, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with motion picture producers for and in behalf of Irving Berlin, Inc., by each of the agents and trustees designated in your answer to Interrogatory No. 3."

A. Annexed hereto as Exhibits 3, 4, 5 and 6 are forms of contracts generally in use by the agent and trustee with motion picture producers with respect to recording of musical compositions in motion pictures.

Answering Interrogatory No. 9, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by Irving Berlin, Inc., which is representative of the general or standard form of license contracts between Irving Berlin, Inc., and motion picture producers, and (b) a complete contract or license agreement entered into for and in behalf of Irving Berlin, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 3, which is representative of the general or standard form of license contracts between such agent or trustee and motion picture producers?"

A. Yes; in so far as such contracts may be said to be representative and in so far as they are in this defendant's possession, subject to the ruling of the Court with respect to their relevancy and materiality. With regard to so much of this interrogatory as is designated as (b), we have already annexed in answer to Interrogatory No. 8, forms of [fol. 1540] contracts.

Answering Interrogatory No. 10, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, Irving Berlin, Inc.'s, complete copy of the license contract entered into by E. C. Mills as agent and trustee for music publishers including Irving Berlin, Inc., with Radio Corporation of American Photophone Company dated on or about September 5, 1928, together with the exhibits attached thereto and the supplements thereof, all of which were printed and bound in pamphlet form for the parties involved therein."

A. Yes, subject to the ruling of the Court with respect to materiality and relevancy.

Answering Interrogatory No. 11, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by Irving Berlin, Inc., been licensed by Irving Berlin, Inc., to any manufacturer for recording upon the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

A. Yes, but the term "sound track" ordinarily applies to recording of sound on film, whereas electrical transcriptions are not made on films.

Answering Interrogatory No. 12, which reads as follows:

Q. "Have any of the copyrighted musical compositions owned or controlled by Irving Berlin, Inc., been licensed by any person, firm, corporation or association acting for and in behalf of Irving Berlin, Inc., as agent, trustee or similar capacity, to any manufacturer for recording from the sound track of electrical transcriptions between the years 1930 to 1937 inclusive?"

[fol. 1541] A. Yes.

Answering Interrogatory No. 13, which reads as follows:

Q. "State the name and address of each person, firm, corporation or association acting for and in behalf of Irving Berlin, Inc., as agent, trustee or similar capacity, in the licensing of recording rights to manufacturers of electrical transcriptions at any time between the years 1930 to 1937 inclusive, and state the date the authority of such representative was created and, if it has been terminated, the date of the termination thereof."

A. John G. Paine, 30 Rockefeller Plaza, New York City, October 21, 1929 to May 1, 1937;

Harry Fox, 45 Rockefeller Plaza, New York City, May 1, 1937 to date.

Answering Interrogatory No. 14, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, the contract, power of attorney or other writing pursuant to which each person, firm, corporation or association named in your answer to Interrogatory No. 13 was authorized to execute license agreements as agent, trustee or similar capacity for and in behalf of Irving Berlin, Inc.?"

A. Yes; subject to the Court's ruling with respect to materiality and relevancy.

Answering Interrogatory No. 15, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by Irving Berlin, Inc., using a form of [fol. 1542] contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

A. No.

Answering Interrogatory No. 16, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into by Irving Berlin, Inc., with manufacturers of electrical transcriptions."

A. This has been answered by answer to Interrogatory No. 15.

Answering Interrogatory No. 17, which reads as follows:

Q. "Have licenses to record copyrighted musical compositions upon the sound track of electrical transcriptions been entered into by any person, firm, corporation or association acting for and in behalf of Irving Berlin, Inc., as agent, trustee or similar capacity, using a form of contract containing any general or standard provisions with respect to the rights acquired by or limitations imposed upon the manufacturer of such electrical transcriptions?"

A. Yes.

Answering Interrogatory No. 18, which reads as follows:

Q. "State the exact wording of each of the general or standard provisions which have been included in recording contracts entered into with manufacturers of electrical transcriptions for and in behalf of Irving Berlin, Inc., by each of the agents or trustees designated in your answer to Interrogatory No. 13."

A. Annexed hereto as Exhibits 7, 8, 9 and 10 are forms [fol. 1543] of printed contracts which contain general or standard provisions.

Answering Interrogatory No. 19, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, (a) a complete contract or license agreement entered into by Irving Berlin, Inc., which is representative of the general or standard form of license contracts between Irving Berlin, Inc., and manufacturers of electrical transcriptions, and (b) a complete contract or license agreement entered into for and in behalf of Irving Berlin, Inc., by each of the agents and/or trustees named in the answer to Interrogatory No. 13 which is representative of the general or standard form of license contract between such agent or trustee and manufacturers of electrical transcriptions?"

A. There is no contract or license agreement between Irving Berlin, Inc., and manufacturers of electrical transcriptions. Such contracts are made in the form of license

agreements between the agent and trustee and manufacturers of electrical transcriptions in the form annexed to Interrogatory No. 18; and with respect to that much of the Interrogatory covered by subdivision (b), we will produce such complete contract upon the trial subject to the ruling of the Court with respect to relevancy and materiality.

Answering Interrogatory No. 20, which reads as follows:

Q. "Has Irving Berlin, Inc., entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the [fol. 1544] parties with respect to specific copyrighted musical compositions?"

A. No.

Answering Interrogatory No. 21, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements entered into by Irving Berlin, Inc., with motion picture producers and manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. This is answered by the answer made to Interrogatory No. 20.

Answering Interrogatory No. 22, which reads as follows:

Q. "Has any person, firm, corporation or association acting for and in behalf of Irving Berlin, Inc., as agent or trustee, or acting as a common agent or trustee for Irving Berlin, Inc., and other owners of copyrighted musical compositions, entered into any general contract or agreement in writing with any motion picture producers or any manufacturers of electrical transcriptions the terms and provisions of which are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes.

Answering Interrogatory No. 23, which reads as follows:

Q. "Will you voluntarily produce upon the trial of this cause, without being required to do so by subpoena or other judicial process, all general contracts or agreements with motion picture producers and manufacturers of electrical [fol. 1545] transcriptions entered into by any agent or trustee acting in behalf of Irving Berlin, Inc., individually, or by any common agent or trustee acting in behalf of Irving Berlin, Inc., and other owners of copyrighted musical compositions, the terms and provisions of which general contracts or agreements are made applicable to recording licenses subsequently entered into between the parties with respect to specific copyrighted musical compositions?"

A. Yes; subject to the ruling of the Court with respect to the relevancy and materiality.

Answering Interrogatory No. 24, which reads as follows:

Q. "State the schedule or rate of license fees for each year from 1930 to 1937 inclusive required by Irving Berlin, Inc., or by any agent or trustee acting for and in behalf of Irving Berlin, Inc., to be paid by manufacturers of electrical transcriptions."

A. There are two types of licenses issued to manufacturers of electrical transcriptions: (a) For the manufacture of individual records or production numbers, fifty cents for each record manufactured, and for popular numbers, twenty-five cents for each record manufactured; (b) In the alternative, a manufacturer of transcriptions may secure a license to make any number of records of a particular composition on the payment of fifteen dollars for each master record manufactured (all other records being pressed from such master record).

Answering Interrogatory No. 25, which reads as follows:

Q. "State the name or title of each copyrighted musical composition and arrangement thereof owned by Irving Berlin, Inc., on the date of answering this interrogatory."

[fol. 1546] A. We annex hereto a partial list of names or titles of copyrighted musical compositions and arrangements thereof owned by Irving Berlin, Inc., on this date. It is impossible for us to furnish a complete list without the expenditure of very substantial sums of money, a great

amount of research work, engaging lawyers and contacting various parties who may have rights or interests in various compositions.

(S.) Saul H. Bornstein.

[fol. 1547] SOUTHERN DISTRICT OF NEW YORK,
State of New York,
City and County of New York, ss:

Saul H. Bornstein, being duly sworn, deposes and says that he is the treasurer of Irving Berlin, Inc., one of the complainants herein; that he has read the foregoing answers to the defendants' interrogatories and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by Irving Berlin, Inc., is because the said Irving Berlin, Inc., is a corporation, and deponent an officer thereof, to wit its treasurer.

Saul H. Bornstein.

Sworn to before me this 11th day of April, 1938.
Marion L. Ellsin, Notary Public, N. Y. Co.

Copy

[fol. 1548]

EXHIBIT No. 1

December 23, 1931.

Paramount Publix Corporation,
1501 Broadway,
New York, N. Y.

DEAR SIRS:

The undersigned, Irving Berlin, Inc. in consideration of the sum of Three Hundred Fifty (\$350.00) Dollars, receipt of which is hereby acknowledged, without warranty and without recourse, does hereby grant to you the non-exclusive, irrevocable license to produce, distribute and exhibit (and to license the exhibition and performance of) a motion picture cartoon of the musical composition entitled "There's Danger In Your Eyes Cherie";

words by Jack Meskill, music by Pete Wendling, which said musical composition was registered for copyright in the Copyright Office of the United States as a published work by Irving Berlin, Inc., on December 5, 1929, No. E:11,347; and a version of which said composition by Harry Richman, was thereafter registered for copyright in the Copyright Office of the United States by Irving Berlin, Inc., on December 5, 1929, No. E:11,742;

under the title of said musical composition; and in connection therewith to photograph and record and reproduce, by electrical or mechanical means, the title, words and music of said composition, in whole or in part, and to use same in synchronism with said song cartoon and to exhibit same and reproduce the records thereof throughout the world.

The foregoing license is intended as a license with respect to the major right of making a production of the said song, solely in the form and manner hereinbefore described; and it is expressly understood that the said license, insofar as it refers to the right of performance of the motion picture production and the synchronized records thereof, is subject to any grant heretofore made by the undersigned to the American Society of Composers, Authors and Publishers, or any Performing Rights Society affiliated therewith if such grant should be held in any country to include the right of performance contemplated hereby.

All rights not herein granted are reserved unto the undersigned.

Very truly yours, Irving Berlin, Inc. (Signed) By:
S. H. Bornstein.

Copy

[fol. 1549]

EXHIBIT No. 2

May 18, 1933,

Paramount Productions, Inc.,
15 Exchange Place,
Jersey City, N. J.

DEAR SIRs:

The undersigned, Irving Berlin, Inc. in consideration of the sum of Two Hundred Fifty (\$250.) Dollars, receipt of which is hereby acknowledged, without warranty and without recourse, does hereby grant to you the non-exclusive,

irrevocable license to produce, distribute and exhibit (and to license the exhibition and performance of) a motion picture cartoon of the musical composition entitled "I'm Playing With Fire":

Words and Music by Irving Berlin, registered for copyright as an unpublished musical composition by Irving Berlin, Inc. on November 18, 1932, No. E: 64198, and thereafter registered for copyright in the name of Irving Berlin, Inc. on December 23, 1932, N. 33870.

Under the title of said musical composition, and in connection therewith to photograph and record and reproduce by electrical or mechanical means the title, words and music of said composition, in whole or in part, and to use same in synchronism with said song cartoon and to exhibit same and reproduce the records thereof throughout the world.

The foregoing license is intended as a license with respect to the major right of making a production of the said song, solely in the form and manner hereinbefore described; and it is expressly understood that the said license insofar as it refers to the right of performance of the motion picture production and the synchronized records thereof, is subject to any grant heretofore made by the undersigned to the American Society of Composers, Authors and Publishers, or any Performing Rights Society affiliated therewith if such grant should be held in any country to include the right of performance contemplated hereby.

All rights not herein granted are reserved unto the undersigned.

Very truly yours, Irving Berlin, Inc. (Signed) By:
S. H. Bornstein.

[fol. 1550] EXHIBITS 3-6, Inclusive

Exhibits 3, 4, 5 and 6 answering Interrogatory No. 8, are identical with Exhibits 3, 4, 5 and 6 annexed to the answers of Gustave Schirmer, Secretary of G. Schirmer, Inc.

[fols. 1551-1552] EXHIBITS 7-10, Inclusive

Exhibits 7, 8, 9, and 10 answering Interrogatory No. 18, are identical with Exhibits 7, 8, 9, and 10 annexed to the answers of Gustave Schirmer, Secretary of G. Schirmer, Inc.

[fol. 1553] STATEMENT RE COMPLAINANTS' EXHIBIT 1 ANNEXED TO DEPOSITION OF JEROME KERN, TAKEN IN CALIFORNIA ON JUNE 15, 1937

This exhibit contains a list of more than 500 copyrighted compositions, of which the music was written by Jerome Kern. Such compositions were copyrighted at various dates between 1905 and 1939. Specimen compositions giving the collaborator, the publisher, the date of copyright and the show, if any, in which they appeared, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Show
Can't Help Lovin' Dat Man	Oscar Hammerstein 2d	T. B. Harms Co.	12/ 2/28	Show Boat
Cat And The Fiddle	Otto Harbach	T. B. Harms Co.	2/ 2/32	
Don't Turn My Picture To The Wall	Robert B. Smith	Harms, Inc.	4/ 9/12	The Girl From Montmartre
Good Morning, Dearie	Anne Caldwell	T. B. Harms Co.	11/14/21	Good Morning, Dearie
Gypsy Caravan	H. Dietz	T. B. Harms Co.	9/23/24	Dear Sir
Here Am I	Oscar Hammerstein 2d	T. B. Harms Co.	9/ 7/29	Sweet Adeline
High, Wide and Handsome	Oscar Hammerstein 2d	T. B. Harms Co.	6/ 9/37	High, Wide and Handsome
Hitchy-Koo 1920	H. Anderson/Arr.	Chappell & Co.	1/21/21	Hitchy-Koo 1920
Home Sweet Home	Anne Caldwell	T. B. Harms Co.	4/21/19	A New Girl
Honeymoon Lane	M. E. Rourke	Harms, Inc.	4/ 4/13	Nobody Home
In Arcady	H. Reynolds	J. Kern	4/19/15	
It's Not In The Cards	D. Fields	T. B. Harms Co.	3/17/36	Music In The Air
I've Told Ev'ry Little Star	O. Hammerstein 2d	T. B. Harms Co.	10/28/32	The Cabaret Girl
Journey's End	P. G. Wodehouse	T. B. Harms Co.	6/26/17	Ziegfeld Follies 1917
Just Because You're You	Gene Buck	T. B. Harms Co.	10/24/21	Good Morning, Dearie
Ka-Lu-A	A. Caldwell	T. B. Harms Co.	4/16/34	Three Sisters
Keep Smiling	O. Hammerstein	J. Kern	1/27/20	
Look For The Silver Lining	Bud DeSylva	T. B. Harms Co.	10/ 5/31	The Cat And The Fiddle
The Night Was Made For Love	Otto Harbach	T. B. Harms Co.	5/15/28	Blue Eyes
No One Else But You	Graham John	T. B. Harms Co.	12/ 2/27	Show Boat
Ol' Man River	Oscar Hammerstein 2d	T. B. Harms Co.	1/21/37	When You're In Love
Our Song	Dorothy Fields	Chappell & Co.	11/22/22	The Bunch and Judy
Pale Venetian Moon	Anne Caldwell	T. B. Harms Co.	10/31/23	Stepping Stones
Raggedy Ann	Anne Caldwell	T. B. Harms Co.	10/24/21	Good Morning, Dearie
Rose Marie	Anne Caldwell	T. B. Harms Co.	1/17/21	Sally
Sally	Clifford Grey	T. B. Harms Co.	10/29/31	Cat And The Fiddle
She Didn't Say Yes	O. Harbach	T. B. Harms Co.		

[fol. 1554]

Show Boat.....	Oscar Hammerstein 2d	T. B. Harms Co.	4/ 5/28
Susie.....	Anne Caldwell	T. B. Harms Co.	11/13/26
Till The Clouds Roll By.....	P. G. Wodehouse	Harms, Inc.	2/16/17
Turkey Trot.....	D. David Stamper	Norworth Pub. Co.	7/17/11*
When Your Heart's On Fire Smoke Gets In Your Eyes.....	O. Harbach	T. B. Harms Co.	11/ 3/33
Whistling Boy.....	Dorothy Fields	Chappell & Co. Inc.	1/14/37
Who.....	O. Harbach & O. Hammer- stein 2d	T. B. Harms Co.	9/19/25
In Love With Love.....	Anne Caldwell	T. B. Harms Co.	11/ 2/23
* Renewed 7/28/38 by Dave Stamper 10/27/38 by J. D. Kern			Stepping Stones

[fol. 1555] STATEMENT RE COMPLAINANTS' EXHIBIT 4 ANNEXED TO DEPOSITION OF SIGMUND ROMBERG, TAKEN IN CALIFORNIA ON JUNE 15, 1937.

This exhibit contains a list of more than 450 copyrighted compositions, of which the music was written by Sigmund Romberg. Such compositions were copyrighted at various dates between 1910 and 1938. Specimen compositions giving the collaborator, the publisher, the date of copyright and the show, if any, in which they appeared, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Show
Blame It All on The Night.....	Otto Harbach	Robbins Music Corp.	11/13/36	Forbidden Melody
Blossom Time.....	Franz Schubert & Heinrich Berte	Karcsag Pub. Co.	12/ 1/21	Blossom Time
Childhood Days.....	Matthew Woodward	G. Schirmer	5/22/16	A Brazilian Honeymoon
Drinking Song.....	Dorothy Donnelly	Harms Inc.	1/10/25	Student Prince in Heidelberg
Goodbye My Love Goodbye.....	Oscar Hammerstein 2nd	Harms Inc.	1/30/31	Children of Dreams
Gypsy Song.....	Rida Johnson Young	G. Schirmer	8/18/17	Maytime
How Could A Fellow Want More.....	Otto Harbach	Robbins Music Corp.	10/22/36	Forbidden Melody
If I Had A Girl Like You.....	Oscar Hammerstein 2nd	Harms Inc.	1/30/31	Children of Dreams
I'm Just A Sentimental Fool.....	Oscar Hammerstein 2nd	Harms Inc.	9/14/28	New Moon
Lover Come Back To Me.....	Oscar Hammerstein 2nd	Harms Inc.	9/14/28	New Moon
Mariachie.....	Gus Kahn	Leo Feist Inc.	2/23/38	Girl of the Golden West
Marianna.....	Oscar Hammerstein 2nd	Harms Inc.	1/23/28	New Moon
Maytime.....	Rida Johnson Young	G. Schirmer	9/28/17	

[fol. 1555] STATEMENT RE COMPLAINANTS' EXHIBIT 4 ANNEXED TO DEPOSITION OF SIGMUND ROMBERG, TAKEN IN CALIFORNIA ON JUNE 15, 1937.

This exhibit contains a list of more than 450 copyrighted compositions, of which the music was written by Sigmund Romberg. Such compositions were copyrighted at various dates between 1910 and 1938. Specimen compositions giving the collaborator, the publisher, the date of copyright and the show, if any, in which they appeared, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Show
Memories.....	Louis Weslyn	M. Witmark & Sons	4/23/10*	
New Moon.....	Oscar Hammerstein 2nd & Frank Mandel & Laurence Schwab			
Night Is Young.....	Oscar Hammerstein 2nd	Harms Inc.	12/29/28	The Night Is Young
Nina Rosa.....	Otto Harbach & Irving Caesar	Robbins Music Corp.	1/10/35	
Riff Song.....	Otto Harbach & Oscar Hammerstein 2nd	Harms Inc.	5/ 8/34	Nina Rosa
Road To Paradise.....	Rida Johnson Young	Harms Inc.	11/ 8/26	The Desert Song
Romance.....	Otto Harbach & Oscar Hammerstein 2nd	G. Schirmer	8/18/17	Maytime
Rosalie Selection.....	George Gershwin			
Sally Down Our Alley.....	Harold Atteridge & Herman Timberg	Harms Inc.	11/ 8/26	The Desert Song
Some Day.....	Harry B. Smith	New World Music Corp.	3/ 6/28	Rosalie
Song Of Love.....	Frans Schubert & Heinrich Berté	G. Schirmer	11/10/17	Doing Our Bit
Student Prince.....	Dorothy Donnelly	Harms Inc.	3/22/27	Cherry Blossoms
Students March Song.....	Dorothy Donnelly			
Sweetheart.....	Rida Johnson Young	Harczag Pub. Co.	2/10/22	Blossom Time
Venetia.....	Harold Atteridge	Harms Inc.	6/24/32	
Wanting You.....	Oscar Hammerstein 2nd	Harms Inc.	1/27/25	Student Prince In Heidelberg
When Hearts Are Young.....	Cyrus Wood & Alfred Goodman	G. Schirmer	8/18/17	Maytime
When I Close My Eyes.....	Oscar Hammerstein 2nd	Winter Garden Co.	10/14/14	Dancing Around
When I Grow Too Old To Dream.....	Oscar Hammerstein 2nd	Harms Inc.	9/14/25	New Moon
When Knighthood Was In Flower.....	Harold Atteridge & Jean Schwartz	Harms Inc.	10/28/22	The Lady in Ermine
Will You Remember.....	Rida Johnson Young	Harms Inc.	1/ 4/28	New Moon
Your Land And My Land.....	Dorothy Donnelly	Robbins Music Corp.	1/10/35	The Night Is Young
* Renewed May 4, 1937 by M. Witmark & Sons				

This exhibit contains a list of approximately 400 copyrighted compositions, of which the words or music were written by Irving Caesar. Such compositions were copyrighted at various dates between 1919 and 1939. Specimen compositions giving the collaborator the publisher the date of copyright, and the show, if any, are the following:

Adored One.....	Sigmund Romberg	Harms Inc.	9/21/31	Nina Rosa
Crazy Rhythm.....	Joseph Meyer	Harms Inc.	4/14/28	Here's Howe
I Want to be Happy.....	Roger Wolfe-Cahn	Harms Inc.	6/19/24	No, No, Nanette
Is It True What They Say about Dixie.....	Vincent Youmans	Irving Caesar Inc.	1/22/36	
Just A Gigolo.....	L. Casucci	DeSylva, Brown & Henderson	12/26/30	
Longing (Triste Ricordo).....	Adolfo Geniso	Harms Inc.	6/13/21	
No, No, Nanette.....	Ernesto DeCurtis	Harms Inc.	6/ 3/25	No, No, Nanette
Sing A Song of Safety.....	Otto Harbach, Vincent Youmans, Frank Mandel	Harms Inc.	5/ 7/37	Hit the Deck
Sometime I'm Happy.....	Gerald Marks	Irving Caesar Inc.	4/21/27	
Swanee.....	Vincent Youmans	Harms Inc.	11/ 1/19	No, No, Nanette
Tea for Two.....	Geo. Gershwin	Harms Inc.	6/19/24	
There's Something Spanish in Your Eyes.....	Vincent Youmans	Harms Inc.		
What a Perfect Combination.....	Cliff Friend	Remick & Co.	12/ 9/27	
	Bert Kalmer, Harry Ruby, Harry Akst	Harms Inc.	10/28/32	

[Fols. 1558-1568]

CONDENSATION OF PLAINTIFFS' DEPOSITION EXHIBIT 18

This exhibit contains a list of more than 400 copyrighted compositions, of which the words or music were written by George W. Meyer. Such compositions were copyrighted at various dates between 1907 and 1938. Specimen compositions giving the collaborator, the publisher, the date of copyright, and the show, if any, are the following:

Anything Is Nice If It Comes from Dixieland.....	Grant Clarke & Milton Ager	Leo Feist Inc.	2/ 8/19	
Black-Birds.....		Ascherberg, Hopwood & Crew	10/20/26	Black-Birds
Bring Back My Daddy to Me.....	William Tracey & Howard Johnson	Leo Feist Inc.	11/26/17	
Brown Eyes Why Are You Blue.....	Al Bryan	Henry Waterson Inc.	9/ 9/25	
Come On and Baby Me.....	Sam M. Lewis/Joe Young	Waterson, Berlin & Snyder Co.	9/ 6/16	
Down Among the Sleepy Hills of Tennessee.....	Sam M. Lewis/Joe Young	Irving Berlin Inc.	2/28/23	

[Vol. 1558-1568]

CONDENSATION OF PLAINTIFFS' DEPOSITION EXHIBIT 18—Continued

This exhibit contains a list of more than 400 copyrighted compositions, of which the words or music were written by George W. Meyer. Such compositions were copyrighted at various dates between 1907 and 1938. Specimen compositions giving the collaborator, the publisher, the date of copyright, and the show, if any, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Show
Everything Is Peaches Down in Georgia	Grant Clarke & Milton Ager	Leo Feist Inc.	7/19/18		
For Baby and Me	Edgar Leslie & E. Ray Goetz	B. Feldman & Co.	11/22/26		
For Me and My Gal	Edgar Leslie/Billy Rose	Waterson, Berlin & Snyder Co.	1/24/17		
Girl I Left Behind Me	Edgar Leslie	Famous Music Corp.	7/29/35		
Here Comes the Bride	E. Ray Goetz	Leo Feist Inc.	6/21/19		
I Believe in Miracles	Sam M. Lewis & Pete Wendling	Leo Feist Inc.	12/27/34		
If He Can Fight Like He Can Love	Grant Clark & Howard E. Rogers	Leo Feist Inc.	4/30/18		
Good-Night Germany		Maurice Richmond Mus. Co.	4/ 1/16		
Just A Girl of Yesterday					
Just Like Washington Crossed the Delaware	Howard Johnson	Leo Feist Inc.	3/29/18		
Let's All Be American Now	Irving Berlin & Edgar Leslie	ABC Standard Music	2/17/17		
Lonesome	Sam M. Lewis/Joe Young	F. A. Mills	1/2/09		Famous Music-1/4/36
My Tucky Home	Gus Kahn	Irving Berlin Inc.	11/14/23		
Sittin' in a Corner		Irving Berlin Inc.	8/16/23		
Tuck Me to Sleep in My Old Kentucky Home	Sam M. Lewis/Joe Young	Irving Berlin Inc.	8/ 6/21		
When You're a Long Long Way From Home	Sam M. Lewis	Broadway Music Corp.	7/17/14		

[fol. 1569]. PLAINTIFFS' DEPOSITION EXHIBIT No. 19

Schedule VI

Agreement, made and entered into this 8th day of June, 1910, by and between Victor Herbert, of the City of New York, party of the first part, and M. Witmark & Sons, a corporation organized under the laws of the State of New York, party of the second part,

Whereas, the party of the first part has undertaken to write the musical score of a musical play entitled

"Trentini"

(title subject to change)

the book and lyrics of which are by Rida Johnson Young, to be produced under the management of — and

Whereas, the party of the second part is desirous of acquiring the exclusive license to print, publish and sell said musical score and any part or parts thereof, and the libretto and lyrics thereof, and any arrangement or selection of the whole or any part thereof.

Now, Therefore, This Agreement Witnesseth:

I. This agreement is made in consideration of the sum of One Dollar by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged and in consideration of the faithful performance by the party of the second part of the terms, covenants and conditions herein-after contained; and this agreement is limited exclusively to matters in connection with the printing, publishing and selling copies of said score, libretto and lyrics and parts thereof.

II. The party of the first part hereby grants to the party of the second part the sole and exclusive license and privilege to print, publish and sell in all countries copies of the libretto and lyrics and piano and vocal score of said musical play, or any part or portion of the said libretto, lyrics and [fol. 1570] score and copies of any arrangement or selection of the whole or any part of said libretto, lyrics and score during the term of the copyrights thereof and renewals of such copyrights.

III. The party of the second part in consideration of said license, agrees at its own cost and expense, to do all

acts and take all proceedings necessary or convenient to the procurement of copyright or copyrights with renewals of the same in said libretto, lyrics and score and each and every part thereof and in all selections and arrangements thereof, as well as to give copyright performances in England and wherever necessary to protect the performing rights therein, in all countries in which it is possible to secure copyright and said copyrights so secured shall remain and be for all time the sole and absolute property of the party of the first part and to be held by the party of the second part in trust for the party of the first part; and the party of the second part further agrees at its cost and expense, to take all necessary and proper steps for the purpose of protecting the said copyrights from infringement and otherwise. All copyright performances given as aforesaid shall be at the cost and expense of the party of the first part.

IV. That all arrangements and selections of said score and any part thereof shall be made under the supervision and direction of the party of the first part, at the cost and expense of the party of the second part and the party of the second part shall employ only such musician or musicians for this purpose as may be named by the party of the first part and that neither the said score nor any part thereof, nor any arrangement or selection of the whole or any part of said score shall be published by the party of the second part unless under the supervision of the party of the first part. The party of the second part further [fol. 1571] agrees to print and publish in first class style, the said libretto, lyrics and piano and vocal score and separately such numbers, songs and pieces thereof and such arrangements and selections thereof as may be directed by the party of the first part. The party of the second part agrees to insert upon each copy published the copyright notice or notices required by law, including the notice "that all performing rights are reserved." The party of the second part further agrees that no advertising matter of any kind shall appear on or in connection with the said publication, except such as relates to the said libretto, lyrics or score or the parts thereof, or other compositions composed by the party of the first part.

V. The party of the second part hereby agrees to pay to the party of the first part the following royalties: Twelve

(12¢) cents for and upon each and every copy of the piano and vocal score of said musical and dramatic composition sold by the party of the second part; an amount equal to ten (10%) per cent of the retail marked price thereof for and upon each and every copy of any separate number or songs or any combination of two or more numbers or songs of said musical play when printed together with the words thereof; an amount equal to fifteen (15%) per cent of the retail marked price thereof upon each and every copy of any arrangement or selection of the whole or any part of the music of said musical play for piano or any solo instrument, and an amount equal to ten (10%) per cent of the retail marked price upon each and every copy sold of arrangements for band and orchestra. The party of the second part agrees that the retail marked price of the various publications hereinbefore set forth shall be those customary and prevalent among first class music houses.

[fol. 1572] It is understood that no royalties are to be paid for single numbers designated as "new issues" but the total number of such "new issues" are not to exceed one thousand.

VI. That party of the second part agrees not to distribute, sell, offer or expose for sale any copy of the said libretto and lyrics, piano and vocal scores, or any part or portion of the said libretto, lyrics and scores or any arrangement or selection of the whole or any part thereof, without the signature of the party of the first part conspicuously stamped or impressed upon the title page thereof, either by the party of the first part personally or by his duly authorized agent, and the party of the second part agrees immediately after printing any such copy to submit the same to the party of the first part or his duly authorized agent for signature. The party of the first part agrees at all reasonable times, personally or through his duly authorized agent, to impress or stamp his signature on any such copy as frequently as the party of the second part may reasonably require.

VII. The party of the second part further agrees that it will make regular settlements under this contract promptly on or about the fifteenth day of June and December in each year during the existence of said copyrights and that at the time of such settlement and payment, it will deliver to the party of the first part a full, true and

itemized statement showing in detail all sales made by the party of the second part of any publication hereinbefore set forth and the royalties due said party of the first part at the time of such settlement.

VIII. The said party of the second part agrees that it will keep or cause to be kept, books of account in which [fol. 1573] full and complete entry shall be made of all said publications printed and sold by the party of the second part and its agents and the said books shall at all reasonable times be open to the inspection of the party of the first part or his agent duly appointed in writing; and the said party of the first part or his attorney, shall have the right to examine any and all books of account of the said party of the second part containing any items, memoranda or information relating to the printing and sale of said publications, and to inspect and count the number of copies on hand.

IX. This contract shall not under any circumstances be considered as licensing the party of the second part to present or perform the said libretto, lyrics and musical score or any part thereof or granting any rights therein, except the publication rights. It is understood that this license is personal to the party of the second part and is not assignable by it without the consent in writing of the party of the first part.

X. The term "score" as used herein shall include any additional musical numbers that may be written for said play at any time.

XI. It is expressly understood that no numbers written by any person other than the party of the first part shall be published as part of the said libretto, lyrics and musical score nor shall any such number be published with a title page like or similar to that of the musical score.

XII. It is mutually agreed that the rights hereby granted to the party of the second part by the party of the first part are dependent upon the faithful performances by it of all the covenants and conditions herein contained and the failure of the party of the second part to carry out or perform [fol. 1574] any of the covenants and conditions contained in this contract shall render its rights hereunder voidable at the option of the party of the first part and upon the

party of the first part giving notice to the party of the second part terminating this agreement, then all rights which the party of the second part may obtain by virtue of this contract shall cease and terminate and shall at once revert to the party of the first part and shall belong to him as if this contract had never been made, without prejudice to any rights that the party of the first part may have by reason of any breaches of this contract; and in such event, or in the event of the bankruptcy or insolvency of the party of the second part or its abandonment of the music publishing business, the party of the second part agrees to immediately assign to the party of the first part in proper form, any and all copyrights which the party of the second part may have secured by virtue of this contract and at the same time to return all manuscripts belonging to the said party of the first part.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

In presence of:

Victor Herbert, L.S.

[Seal.]

M. Witmark & Sons, By Isidore W. Witmark, President, L. S.

[fol. 1575]

PLAINTIFFS' DEP. EX. 20

Schedule VII

Agreement, made and entered into this 2nd day of April, 1914, by and between Victor Herbert, of the City of New York, party of the first part, and M. Witmark & Sons, a corporation organized under the laws of the State of New York, party of the second part,

Whereas, the party of the first part has undertaken to write the musical score of a musical play entitled "*The Only Girl*" (Title subject to change)—the musical version of "*Our Wives*"—, and

Whereas, the party of the second part is desirous of acquiring the exclusive license to print, publish and sell said musical score and any part or parts thereof, and the

libretto and lyrics thereof, and any arrangement or selection of the whole or any part thereof,

Now, Therefore, This Agreement Witnesseth:

First. This agreement is made in consideration of the sum of One Dollar by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged and in consideration of the faithful performance by the party of the second part of the terms, covenants and conditions hereinafter contained; and this agreement is limited exclusively to matters in connection with the printing, publishing and selling copies of said score, libretto and lyrics and parts thereof.

Second. The party of the first part hereby grants to the party of the second part the sole and exclusive license and privilege to print, publish and sell in all countries copies of the libretto and lyrics and piano and vocal score of said musical play, or any part or portion of the said libretto, lyrics and score and copies of any arrangement or selection of the whole or any part of said libretto, lyrics and score during the term of the copyrights thereof and renewals of such copyrights.

[fol. 1576] Third. The party of the second part in consideration of said license, agrees at its own cost and expense, to do all acts and take all proceedings necessary or convenient to the procurement of copyright or copyrights with renewals of the same in said libretto, lyrics, and score and each and every part thereof and in all selections and arrangements thereof.

Fourth. That all arrangements and selections of said score and any part thereof shall be made under the supervision and direction of the party of the first part, at the cost and expense of the party of the second part and the party of the second part shall employ only such musician or musicians for this purpose as may be named by the party of the first part and that neither the said score nor any part thereof, nor any arrangement or selection of the whole or any part of said score shall be published by the party of the second part unless under the supervision of the party of the first part. The party of the second part further agrees to print and publish in first class style, the libretto, lyrics and piano and vocal score and separately such numbers, songs and pieces thereof and such arrange-

ments and selections thereof as may be directed by the party of the first part. The party of the second part agrees to insert upon each copy published the copyright notice or notices required by law, including the notice "that all performing rights are reserved". The party of the second part further agrees that no advertising matter of any kind shall appear on or in connection with the said publication, except such as relates to the said libretto, lyrics or score or the parts thereof, or other compositions composed by the party of the first part.

Fifth. The party of the second part hereby agrees to pay to the party of the first part the following royalties: Twelve and one-half ($12\frac{1}{2}\text{¢}$) cents for and upon each and every copy of the piano and vocal score of said musical [fol. 1577] and dramatic composition sold by the party of the second part; an amount equal to seven and one-half ($7\frac{1}{2}\%$) per cent of the retail market price thereof for and upon each and every copy of any separate number or song or any combination of two or more numbers or songs of said musical play when printed together with the words thereof; an amount equal to seven and one-half ($7\frac{1}{2}\%$) per cent of the retail marked price thereof upon each and every copy of any arrangement or selection of the whole or any part of the music of said musical play for piano or any solo instrument. The party of the second part agrees that the retail marked price of the various publications hereinbefore set forth shall be those customary and prevalent among first class music houses.

It is understood that no royalties are to be paid for single numbers designated as "new issues" but the total number of such "new issues" are not to exceed one thousand.

The party of the first part hereby assigns, transfers, sets over and conveys to the party of the second part all mechanical rights in the lyrics written and composed by him for the musical play above mentioned, and the said party of the second part hereby agrees to collect such royalties as may accrue to the party of the first part and will pay to the party of the first part one-half of his share of all moneys received by the said party of the second part.

Sixth. The party of the second part agrees not to distribute, sell, offer or expose for sale any copy of the said libretto and lyrics, piano and vocal score, or any part or portion of the said libretto, lyrics and scores or any ar-

rangement or selection of the whole or any part thereof, without the signature of the party of the first part conspicuously stamped or impressed upon the title page thereof, either by the party of the first part personally or by his duly authorized agent, and the party of the second part [fol. 1578] agrees immediately after printing any such copy to submit the same to the party of the first part or his duly authorized agent for signature. The party of the first part agrees at all reasonable times, personally or through his duly authorized agent, to impress or stamp his signature on any such copy as frequently as the party of the second part may reasonably require.

Seventh. The party of the second part further agrees that it will make regular settlements under this contract promptly on or about the fifteenth day of June and December in each year during the existence of said copyrights and that at the time of such settlement and payment, it will deliver to the party of the first part a full, true and itemized statement showing in detail all sales made by the party of the second part of any publication hereinbefore set forth and the royalties due said party of the first part at the time of such settlement.

Eighth. The said party of the second part agrees that it will keep or cause to be kept, books of account in which full and complete entry shall be made of all said publications printed and sold by the party of the second part and its agents and the said books shall at all reasonable times be open to the inspection of the party of the first part or his agent duly appointed in writing; and the said party of the first part or his attorney, shall have the right to examine any and all books of account of the said party of the second part containing any items, memoranda or information relating to the printing and sale of said publications, and to inspect and count the number of copies on hand.

Ninth. This contract shall not under any circumstances be considered as licensing the party of the second part to present or perform the said libretto, lyrics and musical score or any part thereof or granting any rights therein, [fol. 1579] except the publication rights.

Tenth. The term "score" as used herein shall include any additional musical numbers that may be written for said play at any time.

Eleventh. It is expressly understood that no numbers written by any person other than the party of the first part shall be published as part of the said libretto, lyrics and musical score nor shall any such number be published with a title page like or similar to that of the musical score.

Twelfth. It is mutually agreed that the rights hereby granted to the party of the second part by the party of the first part are dependent upon the faithful performance by it of all the covenants and conditions herein contained and the failure of the party of the second part or carry out or perform any of the covenants and conditions contained in this contract shall render its rights hereunder voidable at the option of the party of the first part and upon the party of the first part giving notice to the party of the second part terminating this agreement, then all rights which the party of the second part may obtain by virtue of this contract shall cease and terminate and shall at once revert to the party of the first part and shall belong to him as if this contract has never been made, without prejudice to any rights that the party of the first part may have by reason of any breaches of this contract; and in such event, or in the event of the bankruptcy or insolvency of the party of the second part or its abandonment of the music publishing business, the party of the second part agrees to immediately assign to the party of the first part in proper form, any and all copyrights which the party of the second part may have secured by virtue of this contract and at the same time to return all manuscripts belonging to the said party of the first part.

[fol. 1580] In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

In presence of:

Victor Herbert, L.S.

[Seal.]

M. Witmark & Sons, by Jay Witmark, Treas.

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AGREEMENT made this 16th day of 1919,
between VICTOR HERBERT of the Borough of Manhattan, City of
New York, hereinafter designated as the COMPOSER, and
T.B. HARRIS & FRANCIS, DAY & HUTTER, a New York corporation,
hereinafter designated as the PUBLISHER.

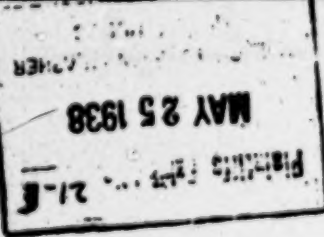
WHEREAS, the Composer has undertaken to compose
all the music for the musical production at present entitled
name of Whynot Wise (to be changed)
which is to be produced during the season

WHEREAS, the Publisher desires to acquire the
exclusive license to print, publish and sell such music, or
any part or parts thereof, or any arrangement or selection
of or from the whole or any part thereof in the United States
of America, and Canada,

NOW THEREFORE, in consideration of the mutual
covenants in this agreement contained, it is agreed as follows:

I. The Composer grants to the Publisher the
sole and exclusive license to print, reprint, publish and
vend in the United States of America, and Canada, all the
music that he shall compose for and that shall be introduced
in the performance of and any
arrangement of or selection from the whole or any part
thereof made under his supervision, during the terms of the
copyrights thereof and of the renewals of such copyrights.

II. The Composer grants to the Publisher,
subject to the terms hereof, the right to secure copyrights
in such countries and renewals of copyrights in the said
scores and in each and every part thereof, and in all
arrangements or selections of the whole or any part thereof.
The Publisher agrees, at its own cost and expense, to do all
acts and take all proceedings necessary or expedient to the
securing of such copyrights and renewals of the same, and all
such copyrights so secured shall be held by the Publisher in
trust for the Composer. The Publisher agrees at its own cost



and expense, to do all acts and take all proceedings necessary or expedient to the securing of such copyrights and renewals of the same, and all such copyrights so secured shall be held by the Publisher in trust for the Composer. The Publisher agrees at its own cost and expense to take all necessary and proper steps for the purpose of protecting the said copyrights from infringements or otherwise. That all arrangements and selections of such scores and any part thereof shall be made under the supervision of the Composer, but at the cost and expense of the Publisher.

III. (a) The Publisher agrees to insert upon the title page of each copy published all the copyright notices required by the law of each country, and to insert on each such copy the name of Victor Herbert as sole composer of the music so published.

(b) The Publisher agrees that all publications containing any of the music of the Composer shall be devoted exclusively to the compositions of the Composer and shall contain neither the whole nor any part of the work of any other composer, nor shall any of the music of the Composer be joined with the music of any other Composer in any collective or composite work. And the Publisher further agrees that the title page of any publication containing the music of the Composer shall contain the name of no other Composer save and except that of Victor Herbert.

IV. The Publisher agrees to pay to the Composer upon each and every copy sold the following royalties:

- (a) Eight cents per copy for each pianoforte copy of each separate number.
- (b) Twelve and one-half cents for and upon each and every copy of the piano score.
- (c) Fifteen cents per copy for each vocal score.
- (d) Fifteen cents upon each and every copy of

any selection for any instrument.

(e) An amount equal to fifteen percent of the retail marked price thereof upon each band or orchestra arrangement and of any miscellaneous numbers or arrangements not otherwise herein provided for.

V. The Publisher further agrees:

(a) To pay regularly on or before the second Tuesdays of January and July in each year during the terms of the copyrights and of the renewals of copyrights in said scores, arrangements and selections, and so long thereafter as it shall continue to publish and sell said scores, or any part thereof, or any arrangement or selection thereof, the royalties earned from, because or on account of the publication and sale of said scores, arrangements and selections, or any part thereof, such payment to be made to the Composer at his residence, No. 321 West 108th Street, Borough of Manhattan, New York City.

(b) At the same time to account for all the copies of the whole or any part of said scores, selections and arrangements printed and sold by it, and to deliver to the Composer, or the duly authorized representative of the Composer, at No. 321 West 108th Street, Borough of Manhattan, New York City, a full, true and itemized statement showing in detail the number of copies of the whole or any part of said scores selections and arrangements printed and sold by it during the preceding six months, the number of such copies stamped with the autograph signature of the Composer as hereinafter provided, the number of stamped and unstamped publications on hand, and the royalties due to the said Composer.

(c) The Publisher agrees not to distribute, sell offer or expose for sale any copy of the said scores, or of

any part thereof, or of any arrangement or selection of the whole or any part thereof, without the signature of the said Composer conspicuously stamped or impressed upon the title page thereof, either by the Composer or by such other person as may be thereunto duly authorized by the Composer, and the Publisher agrees immediately after printing any copy of any such scores or of any parts, selections or arrangements thereof, to submit the same to the Composer for signature. The Composer agrees that at all reasonable times his representative will impress or stamp said signature on any such copy as frequently as the Publisher may reasonably require.

(d) The Publisher agrees that it will keep or shall cause to be kept true books of account in which full and complete entries shall be made of the number of copies of the scores and parts thereof, and of the selections and arrangements and parts thereof, printed and sold by the Publisher and its agents, and the said books shall at all reasonable times be open to the inspection of the Composer, or his agents or representatives with the privilege to make copies of the same; and the said Publisher agrees to keep all original orders for the printing of said scores, parts, selections and arrangements, and all original orders for shipments of said publications, and that said Composer and his representatives shall have the right to examine any and all books of account of said Publisher containing any item, memoranda or information relating to the said printing, shipment and sales of said publications, as well as the stock of said publications on hand, and all orders for the printing and shipment of said publications.

(e) The Publishers agree that all orders for the printing of said publications shall be first submitted to the Composer, or some other person thereunto duly

appointed by the Composer, who shall countersign the same, and no order for the printing of said publications shall be given unless the same is countersigned.

(f) The Publisher agrees that all the printing of said publications shall be done at and by one and the same printing house, located in New York City.

(g) The Publisher also agrees to secure from the printer and to deliver to the Composer every three months, in the first weeks of December, March, June and September in each year, a full true and itemised statement signed by the printer in his own hand, showing the number of copies of each of the publications above mentioned printed and delivered by him during the preceding three months.

(h) It is expressly agreed that the Composer shall be entitled to the payment of the said royalties in full, free from any charge or deduction whatsoever; the Publisher hereby agrees to arrange with the Author of the lyrics of said production for his compensation, and the Publisher hereby assumes the payment of all compensation and royalties that the author of the lyrics may be entitled to from or because of the publication and sale of the said music and lyrics.

VI. The Publisher agrees immediately after the publication of the score of said production and parts thereof, to deliver to the Composer free of cost two complete copies thereof.

VII. Nothing herein contained shall be construed as granting to the Publisher the right to represent or perform the music, musical numbers, settings and orchestrations, or any part thereof, or any selection or arrangement thereof or as granting to it the right to make parts of instruments serving to reproduce mechanically such music, musical numbers, settings and orchestrations, or any part, arrangement or selection thereof, nor as granting to it

any rights in such music, except the right to copyright and renew copyrights in the same in trust for the Composer, and to print, reprint, publish and vend the same in sheet music form only in accordance with the terms of this agreement.

The Composer agrees to pay to the Publisher as agent for *James H. Miller* fifty percent of all moneys which he shall actually collect on account of the reproduction on phonograph records of any number containing any lyrics written by

VIII. The Publisher agrees not to assign or make any other disposition of this contract, or any right, title or interest therein, nor to grant any right, title or interest therein or in said scores or any part thereof, or in any selection or arrangement thereof, to any person, firm or corporation without the written consent of the said Composer first had and obtained.

The grant of said rights being personal to the Publisher, the said rights shall not be transferable by operation of law or legal proceedings.

IX. The rights of the Publisher under this agreement are dependent upon the due performance by it of each of the terms and covenants herein contained, all of which are hereby agreed upon as being of the essence of this contract, and in case of the Publisher's default in the due performance of any of the terms and covenants on its part to be performed, the Composer may at his election mail a notice addressed to the Publisher, whose office for the purpose of this agreement is fixed at 62-64 West 45th Street, New York City, specifying the nature of the default complained of, and in case said default shall not be rectified in five days, this agreement shall forthwith terminate and all rights hereby granted to the Publisher shall thereupon cease and come to an end, but without prejudice to any right or rights to compensation or damages or to any cause of action which the

Composer may or might have in respect to any breach of this agreement.

It is agreed that if the Publisher shall be adjudicated a bankrupt in proceedings instituted by or against it, or take advantage of the insolvency laws of any State, Territory or Country, or should its property be advertised for sale in pursuance of any judicial, statutory or summary proceedings, or a Receiver of its property be appointed, or in the event of the voluntary or involuntary dissolution of the Publisher, then and in any of such events this contract shall and all rights granted thereunder to the Publisher shall revert to the said Composer, and he shall be at liberty to make such disposition of the publishing rights of such music, musical settings, numbers, orchestrations, etc., as he may desire, and any and all payments theretofore made to him shall be retained by and belong to him absolutely, and in any such case or in the case of the termination of this agreement because of the Publisher's breach of any covenant, the said Publisher agrees that it and its legal representatives will immediately assign to said Composer in due form any and all copyrights and renewals thereof which said Publisher may have secured in pursuance of this contract, and to return and deliver to the Composer all manuscripts belonging to the said Composer, and all copies of all scores of said production and all parts thereof and of all arrangements and selections and parts thereof in its possession or under its control.

IN WITNESS WHEREOF, the Composer has hereunto set his hand and seal and the Publisher has caused this agreement to be subscribed and its corporate seal to be affixed hereto the day and year first above written.

In the presence of: C.B. HARNIS & FRANCIS DAY & PUNTER

1587

By *Laurin Dwyer*

C. B. Harnis

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[fol. 1588]

PLAINTIFFS' DEPOSITION EXHIBIT 22

Schedule I

Acknowledgements from the Copyright Office of the Receipt of Two Copies of the Following Compositions from "The Red Mill"

- | | | | |
|----|-----|---|--|
| 1 | | Dramatic Composition | |
| | | (Because You're You | |
| | | " " " " " " Arr. for Trombone Solo | |
| | | " " " " " " Cornet Solo | |
| 7 | (6) | " " " " " " Mandolin Orch. | |
| | | " " " " " " Guitar Solo | |
| | | " " " " " " Hotel Orch. | |
| 8 | | Entrance (Governor and Chorus) | |
| 9 | | Every Day Is Ladies Day With Me | |
| 10 | | Good-A-Bye John | |
| 11 | | Go While the Goin' Is Good | |
| 12 | | The Red Mill Fantasia | |
| 13 | | Finale 11 | |
| 15 | (2) | (If You Love But Me | |
| | | " " " " " " Arr. for Orchestra | |
| 16 | | I'll Ring the Bell | |
| 17 | | I'm Always Doing Something I Don't Want to Do | |
| | | (In the Isle of Our Dreams | |
| 21 | (4) | " " " " " " Arr. for Hotel Orch. | |
| | | " " " " " " " " Cornet Solo | |
| | | " " " " " " " " Trombone Solo | |
| 23 | | The Legend of the Mill | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 25 | (2) | Mignonette | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 26 | | Moonbeams | |
| 27 | | Opening Chorus Act 1 | |
| 29 | (2) | (The Streets of New York | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 30 | | When You're Pretty the World Is Fair | |
| 32 | (2) | (Whistle It | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 33 | | A Widow Has Ways | |
| 34 | | You Never Can Tell About a Woman | |
| 35 | | The Red Mill Vocal Score | |
| 37 | (2) | Lancers | |
| | | " " " " " " Arr. for Band | |
| 39 | (2) | March and Two Step | |
| | | " " " " " " Orchestra | |
| 40 | | Schottische | |
| | | Arr. for Orchestra | |
| 43 | (3) | (Selection | |
| | | " " " " " " Arr. for Orchestra | |
| | | " " " " " " Band | |
| 46 | (3) | (Waltzes | |
| | | " " " " " " Arr. for Mandolin Orch. | |
| | | " " " " " " Orchestra | |

46 Copyrights

[fol. 1589] Certificates of Publication Covering the Following Arrangements of
"Moonbeams" from "The Red Mill"

- 11 Arrangements
- Mixed Voices
Vocal Orchestra
Male Voices
Duet in D
Female Voices
Two Part Song
Three Part Song
S. A. B.
Cello and Piano
Violin- Cello and Piano
Violin and Piano

Renewal Certificates Covering the Following Compositions from "The Red Mill"

1	Dramatic Composition
2	Because You're You
3	Act 1 Opening Chorus
4	" 2 "
5	Ensemble
6	Entrance Song and Chorus
7	Everyday Is Ladies Day with Me
8	Good-A-Bye John
9	Go While the Going Is Good
10	Finale 1
11	" 2 "
12	If You Love but Me
13	I'll Ring the Bell
14	Renewals In the Isle of Our Dreams
15	I'm Always Doing Something I Don't Want to Do
16	Lancers
17	The Legend of the Mill
18	Mignonette
19	Moonbeams
20	Overture
21	Selection
22	The Streets of New York
23	Teach Them What to Say
24	Whistle It
25	Vocal Score
26	When You're Pretty and the World Is Fair
27	A Widow Has Ways
28	You Never Can Tell About a Woman
11	Arrangements on Moonbeams
28	Renewals
46	Copyrights (originals)
85	Separate copyrights and renewals

[fol. 1590]

PLAINTIFFS' DEPOSITION EXHIBIT 23

Schedule II

Certificates of Publication Covering the Following Numbers from
"Naughty Marietta"

1		Dramatic Composition
		(Ah Sweet Mystery of Life
		" " " " " Arr. for Violin, Cello & Piano
		" " " " " " " Dance Orch.
		" " " " " " " Piano
		" " " " " " " Violin & Piano
		" " " " " " " Duet In D
		" " " " " " " " B Flat
17	(16)	" " " " " " " Three Part Song
		" " " " " " " Mixed Voices
		" " " " " " " Male Voices
		" " " " " " " Two Part Song
		" " " " " " " Male Voices
		" " " " " " " Vocal Orch.
		" " " " " " " Female Voices
		" " " " " " " S. A. B.
		" " " " " " " Cello & Piano
18		All I Crave Is More of Life
19		Barn Dance Schottische
20		Dance of the Marionettes
		(The Dream Melody
23	(3)	(The Dream Melody Arr. for Orchestra
		(The Dream Melody " " Band

- 24 If I Were Anybody Else but Me
 (I'm Falling in Love With Someone)
 28 " " " " " " Arr. for Mixed Voices
 " " " " " " " " Hotel Orch.
 " " " " " " " " Mandolin Orch.
 (Italian Street Song)
 " " " " " " Arr. for Hotel Orch.
 " " " " " " " " Duet in F
 37 (9) " " " " " " " " Soprano Solo
 " " " " " " " " Mixed Chorus
 " " " " " " " " Three Pt. Song
 " " " " " " " " S. A. B.
 " " " " " " " " Two Pt. Song
 " " " " " " " " Voc. Orch.
 38 It Never Never Can Be Love
 40 (2) (It's Pretty Soft for Simon)
 " " " " " " " " Hotel Orch.
 41 Lancers
 42 Live for Today
 43 Mister Voodoo
 45 (2) (Naughty Marietta)
 " " " " " " " " Hotel Orch.
 46 Neath the Southern Moon
 47 New Orleans Jeunesse
 (Selection)
 51 (4) " " " " " " " " Mandolin Orch.
 " " " " " " " " Band
 " " " " " " " " Orchestra
 52 The Sweet By and By
 54 (2) (Tramp Tramp Tramp)
 " " " " " " " " T.T.B.B.

[fol. 1591] Certificates of Publication Covering the Following Numbers from
 "Naughty Marietta"

- 56 (2) (Waltzes
 " Arr. for Orchestra
 57 We've Hunted the Wolf in the Forest
 58 You Marry a Marionette

58 Copyrights

[fol. 1592] PLAINTIFFS' DEPOSITION EXHIBIT 24

Schedule III

M'lle. Modiste

Music—Victor Herbert

Book—Henry Blossom, Jr.

Partial List of Original Copyrights—in name of:

(M. Witmark & Sons, New York, as trustees for Victor Herbert
 and
 Henry Blossom, Jr.

- 1 Book—Copyrighted October 6, 1905—Entry D 7367
 2 Vocal Score—Copyrighted October 30, 1905—Entry C 105903

Individual Numbers

- "If I Were on the Stage" (Note: original title of "Kiss Me Again")
 3 Song—Copyrighted October 13, 1905—Entry C 104750
 4 Arrangement for Hotel Orchestra—Copyrighted November 3, 1905
 Entry C 106471
 5 Arrangement for Mandolin Orchestra by T. P. & Geo. J. Trinkaus
 Copyrighted December 21, 1906—Entry C 137558

- 6 "In Dreams So Fair"
Song:—Copyrighted January 25, 1906—Entry C 112826
- "Kiss Me Again" (part of "If I were on the Stage")
7 Copyrighted: April 16, 1915 —Entry E 358936—song
8 June 7, 1915 —Entry E 364261—Vocal Orch. Arrg.
9 April 20, 1916 —Entry E 388379
10 Oct. 18, 1916 —Entry E 398837
11 April 12, 1918 —Entry E 424236—Band Arrange-
ment
12 May 10, 1918 —Entry E 427376—Arrg. by Otto
Langey
13 August 20, 1921—Entry E 533584
14 August 11, 1923—Entry E 699618—
15 Dec. 7, 1931 —Entry E 523779)Arrg. for violin
16 E 523781)—and piano
- "I Want What I Want When I Want It"
17 Copyrighted: October 4, 1905 —Entry C 104028
18 January 20, 1906—Entry C 112488
19 May 5, 1906 —Entry C 120630
- "Chorus of Footmen"
20 Song Copyrighted October 13, 1905—Entry C 104751
21 Piano Arrangement Copyrighted October 13, 1905—Entry C 104752
- "Dear Little Girl Who Is Good"
22 Copyrighted September 29, 1905—Entry C 103563
[fol. 1593]
- "Hats Make the Woman"
23 Copyright September 29, 1905—Entry C 103564
- "I'm Always Misunderstood"
24 Copyright October 7, 1905—Entry C 104282
- "I Should Think You Could Guess"
25 Copyright October 7, 1905—Entry C 104283
- "Mascot of the Troop"
26 Song—Copyright October 7, 1905—Entry C 104281
27 March—Copyright July 2, 1906—Entry C 134697
28 Two Step for Piano—Arrg. by Karl L. Hoschner
Copyright January 20, 1906—Entry C 112489
29 Arrg. for Hotel Orchestra
Copyright October 27, 1905—Entry C 105784
30 March & Two Step Arrg. for Orchestra
Copyright February 21, 1906—Entry C 114739
- "Keokuk Culture Club"
31 Song—Copyright October 16, 1905—Entry C 105025
- "The Time, The Place, and The Girl"
32 Song—Copyright October 12, 1905—Entry C 104690
33 Arrg. for Hotel Orch.
Copyright November 3, 1905—Entry C 106470
34 Arrg. by Trinkaus for Mandolin Orch.
Copyright February 9, 1906—Entry C 113860
- "The Nightingale and The Star"
35 Copyright October 14, 1905—Entry C 104803
- "When The Cat's Away the Mice Will Play"
36 Song—Copyright October 16, 1905—Entry C 105026
37 Arrg. by George Trinkaus for Mandolin Orch.
Copyright December 20, 1924—Entry C 606021
- "Ze English Language"
38 Song—Copyright October 12, 1905—Entry C 104691

"Love Me, Love My Dog"

39 Song—Copyright September 25, 1905—Entry C 103305

Opening Chorus—Act I

40 Copyright October 23, 1905—Entry C 105504

[fol. 1594]

Finale Act I

41 Copyright November 3, 1905—Entry C 106468

Opening Chorus—Act II

42 Copyright October 20, 1905—Entry C 105311

Entr Acte

43 Piano—Copyright December 29, 1905—Entry C 105023

44 Arrg. for Orch. by H. L. Rogers—Copyright January 29, 1906
Entry C 113103

Ballet

45 Piano—Copyright October 16, 1905—Entry C 105023

Selections

46 Piano Arrg. Copyright October 30, 1905—Entry C 105902

47 Orch. arrg. by Otto Langey Copyright January 15, 1906
Entry C 112206

Miscellaneous

48 Fantasia Arrangement by Tom Clark for piano and trombone
Copyright August 24, 1907—Entry C 160407

49 ditto for piano and cornet
Copyright August 24, 1907—Entry C 160408

50 Waltz Arrangement for Orchestra by Otto Langey
Copyright March 3, 1906—Entry C 115495

51 ditto for piano by Karl J. Hoschner
Copyright February 21, 1906, Entry C 114732

52 March and Two Step
Arrangement for Orchestra by Otto Langey
Copyright February 21, 1906—Entry C 114738

53 Lancers Arrangement for Orchestra by Otto Langey
Copyright January 29, 1906—Entry C 113104

[fol. 1595]

PLAINTIFFS' DEPOSITION EXHIBIT 25

Renewals of Copyrights

M^{lle}. Modiste

1 Book—Renewed in name of Marjorie Wilson, widow of author; November 5, 1932—Entry R 22194 (7367)

Following Renewed in name of Ella Herbert Bartlett, Clifford Herbert, and Marjorie Wilson:

Vocal Score

2 December 2, 1932—Entry R 22367 (105903)

"If I Were on The Stage" ("Kiss Me Again")

3 Song December 2, 1932—Entry R 22366 (104750)

4 Hotel Orch. Arrg. December 10, 1932—Entry R 22495 (106471)

"I Want What I Want When I Want It"

5 November 5, 1932—Entry R 22026 (104028)

"Chorus of Footmen"

6 Song December 2, 1932—Entry R 22368 (104751)

7 Piano Arrg. December 2, 1932—Entry R 22369 (104752)

"Dear Little Girl Who Is Good"

8 November 5, 1932—Entry R 22034 (103563)

- "Hats Make the Woman"
 9 November 5, 1932—Entry R 22025 (103564)
- "I'm Always Misunderstood"
 10 November 5, 1932—Entry R 22022 (104282)
- "I Should Think that You Could Guess"
 11 November 5, 1932—Entry R 22023 (104283)
- "Mascot of the Troop"
 12 Song—November 5, 1932—Entry R 22021 (104281)
- "Keokuk Culture Club"
 13 Song—December 2, 1932—Entry R 22387 (105025)
- "The Time, The Place and The Girl"
 14 Song—December 2, 1932—Entry R—22363 (104690)
- 15 Hotel Orch. Arr. December 10, 1932—Entry R 22494 (106470)
- [fol. 1596]
- "The Nightingale and The Star"
 16 December 2, 1932—Entry R 22375 (104803)
- "When The Cat's Away"
 17 December 2, 1932—Entry R 22388 (105026)
- "Ze English Language"
 18 December 2, 1932—Entry R 22364 (104691)
- "Love Me, Love My Dog"
 19 October 5, 1932—Entry R 21656 (103305)
- Opening Chorus—Act I
 20 December 2, 1932—Entry R 22402 (105504)
- Finale—Act I
 21 December 9, 1932—Entry R 22493 (106468)
- Opening Chorus—Act II
 22 December 2, 1932—Entry R 22395 (105311)
- Entr Act
 23 Piano—January 3, 1933—Entry R 33851 (111033)
- Ballet
 24 Piano—December 2, 1932—Entry R 22386 (105023)
- Selections
 25 Piano—December 2, 1932—Entry R 22413 (105902)

Schedule IV

Red Mill

Original Copyrights issued to M. Witmark & Sons—as trustees for Victor Herbert & Henry Blossom, Jr. Renewals issued to Ella H. Bartlett, Clifford Herbert and Marjorie Wilson.

	Original		Renewals	
	Date	Entry No.	Date	Entry No.
1 Book.....	Aug. 27, 1906	D-8998	Jan. 29, 1934	R-29233
2 Vocal Score.....	Sept. 27, 1906	C-130652	Jan. 6, 1934	R-28441
Individual Numbers				
3 Overture—Piano Score.....	Sept. 24, 1906	C-130367	Jan. 6, 1934	R-28420
4 Opening Chorus—Act I.....	July 25, 1906	C-126164	Aug. 25, 1933	R-26740
5 Entrance Song and Chorus.....	Aug. 22, 1906	C-127973	Aug. 25, 1933	R-26766
6 Finale I.....	Aug. 6, 1906	C-126953	Aug. 25, 1933	R-26749
7 Opening Chorus—Act II.....	Aug. 6, 1906	C-126954	Aug. 25, 1933	R-26750
8 Ensemble.....	Aug. 10, 1906	C-127259	Aug. 25, 1933	R-26756
9 Finale II.....	Sept. 24, 1906	C-130368	Jan. 6, 1934	R-28425
10 Because You're You.....	Sept. 7, 1906	C-129045	Sept. 21, 1933	R-27086
11 Every Day Is Ladies Day.....	Sept. 7, 1906	C-129046	Sept. 21, 1933	R-27087
12 Good-bye, John.....	Sept. 24, 1906	C-130414	Jan. 6, 1934	R-28433
13 Go While the Going is Good.....	Aug. 22, 1906	C-127974	Aug. 25, 1933	R-26767
14 If You Love But Me.....	Mar. 30, 1907	C-147028	Apr. 3, 1934	R-30899
15 I'll Ring the Bell.....	Sept. 24, 1906	C-130415	Jan. 6, 1934	R-28434
16 I'm Always Doing Something.....	Aug. 22, 1906	C-127975	Aug. 25, 1933	R-26768
17 In the Isle of Our Dreams.....	Aug. 22, 1906	C-127977	Aug. 25, 1933	R-26770
18 Legend of the Mill.....	Aug. 6, 1906	C-126956	Aug. 25, 1933	R-26752
19 Mignonette.....	July 19, 1906	C-125813	Aug. 25, 1933	R-26734
20 Moonbeams.....	Oct. 6, 1906	C-131451	Jan. 6, 1934	R-28455
21 Streets of New York.....	Aug. 22, 1906	C-127976	Aug. 25, 1933	R-26769
22 Teach Them What To Say.....	Aug. 10, 1906	C-127258	Aug. 25, 1933	R-26755
23 When You're Pretty and the World is Fair.....	Jan. 24, 1907	C-140923	Jan. 29, 1934	R-29202
24 Whistle It.....	Aug. 6, 1906	C-126955	Aug. 25, 1933	R-26751
25 A Widow Has Ways.....	July 19, 1906	C-125812	Aug. 25, 1933	R-26733
26 You Never Can Tell About A Woman.....	July 19, 1906	C-125811	Aug. 25, 1933	R-26732

PLAINTIFFS' DEPOSITION EXHIBIT 26—Continued

Schedule IV

Red Mill

Original Copyrights issued to M. Witmark & Sons—as trustees for Victor Herbert & Henry Blossom, Jr. Renewals issued to Ella H. Bartlett, Clifford Herbert and Marjorie Wilson.

		Original	Renewals
		Date	Date
		Entry No.	Entry No.
27	Because You're You—Arrg'd for Guitar by T. P. & Geo. J. Trinkaus	Mar. 5, 1907	C-144656
28	In The Isle of Our Dreams—Arrg't for Mandolin Orch. by Trinkaus	Feb. 2, 1907	C-142116
29	Selections—Arrg'd for Military Band by Herbert L. Clarke	Mar. 4, 1907	C-144584
30	March and Two Step—Arrg'd for Band by Herbert L. Clarke	Mar. 4, 1907	C-144585
31	March and Two Step—Arranged for Orchestra by Otto Langey	Dec. 31, 1906	C-139003
32	Waltzes—Arrg'd for Mandolin Orch. by Trinkaus	May 1, 1907	C-150181
33	Schottische—Arrg'd for Orchestra by Otto Langey	Dec. 31, 1906	C-139002
[fol. 1598]			
34	Lancers—Arrg'd by Otto Langey Orchestra Parts only	Oct. 29, 1906	C-133348
35	Because You're You—Arrg'd for Mandolin Orch. by Trinkaus	Dec. 13, 1906	C-136836
36	Selections—Arrg'd for Orchestra by Otto Langey	Nov. 17, 1906	C-134786
37	Waltzes—Arrg'd for Orchestra by Otto Langey	Dec. 7, 1906	C-136302
38	If You Love But Me—Arrg'd for Orchestra by W. C. O'Hare	June 4, 1907	C-153642
39	Fantasia—Arrg. for Piano and Trombone by Tom Clark	Aug. 24, 1907	C-16404
40	Fantasia—Arrg. for Piano and Cornet by Tom Clark	Aug. 24, 1907	C-16405
41	In the Isle of Our Dreams—Song with Guitar Accom. arr. by Trinkaus	Mar. 8, 1907	C-146181
42	Selections—Arrg. for Mandolin Orch. by Trinkaus		C-146806
43	Waltzes—Arrg. for Military Band by Herbert L. Clarke	Apr. 3, 1907	C-147325
44	Lancers—Arrg. for Piano by Karl L. Hoschna	Jan. 23, 1908	C-172634
	Selections—Arrg. by Karl L. Hoschna		

44 Original Copyrights

28 Renewals

72 Copyrights Total

Apr. 11, 1935 R-37148 27
1934 R-28472 28

Babes in Toyland

Original Copyrights issued to M. Witmark & Sons—as trustees for Victor Herbert & Glen MacDonough. Renewals issued to Ella H. Bartlett, Clifford Herbert and Alan MacDonough.

	Original	Entry No.	Date	Renewals	Entry No.	Date
1 Book.....	June 15, 1903	D-3587	June 26, 1930	9435	1	
2 Vocal Score.....	Aug. 22, 1903	C-53514	Aug. 22, 1903	R-9900	2	
Individual Numbers						
3 March of the Toys—Piano Score.....	June 25, 1903	C-50193	July 25, 1930	R-9794	3	
4 Babes in Toyland Waltzes—Arr'g't for Piano by Karl Hoschna.....	Aug. 11, 1903	C-52908	Sept. 3, 1930	R-9990	4	
5 Selections—Piano Arr'g't by K. Hoschna.....	Aug. 13, 1903	C-53048	Sept. 3, 1930	R-9991	5	
6 March and Two Step—Arr. for Piano by Hilding Anderson.....	Aug. 27, 1903	C-53819	Sept. 3, 1930	R-10028	6	
7 Toyland.....	May 14, 1903	C-47877	July 25, 1930	R-9793	7	
8 Opening Act 3—Chorus.....	Sept. 23, 1903	C-55185	Sept. 24, 1930	R-10300	8	
9 Opening Act 2—.....	Aug. 13, 1903	C-53068	Sept. 3, 1930	R-9992	9	
10 Barney O'Flynn.....	July 1, 1903	C-50620	July 25, 1930	R-9790	10	
11 Beatrice Barefacts.....	May 28, 1904	C-71875	June 3, 1931	R-14757	11	
12 Before and After.....	May 11, 1903	C-47607	July 25, 1930	R-9792	12	
13 Birth of the Butterfly—Finale Act I.....	Aug. 19, 1903	C-53345	Sept. 3, 1930	R-10023	13	
14 Country Dance.....	Aug. 13, 1903	C-53067	Sept. 3, 1930	R-10021	14	
15 Contrary Mary.....	May 11, 1903	C-47608	Sept. 3, 1930	R-9989	15	
16 Floretta.....	June 5, 1903	C-49100	July 25, 1930	R-9796	16	
17 Go to Sleep, Slumber Deep.....	July 22, 1903	C-51815	July 22, 1930	R-9798	17	
18 Gavotte (Eccentric Dance) Piano.....	Aug. 19, 1903	C-53344	Sept. 3, 1930	R-10024	18	
19 He Won't Be Happy Till He Gets It (Words by Chas. N. Douglas)...	Jan. 11, 1904	C-62674	Jan. 14, 1931	R-12327	19	
20 I Can't Do That Sum.....	Oct. 31, 1903	C-57876	Nov. 1, 1930	R-11039	20	
21 In the Toymakers Workshop.....	Oct. 7, 1903	C-56203	Nov. 19, 1930	R-11431	21	
22 Jane.....	June 17, 1903	C-49789	July 25, 1930	R-9795	22	
23 John Johnson.....	May 14, 1903	C-47876	Sept. 3, 1930	R-9988	23	
24 Legend.....	Aug. 22, 1903	C-53511	Sept. 3, 1930	R-10027	24	
25 Mignonette.....	Aug. 19, 1903	C-53342	Sept. 3, 1930	R-10022	25	
26 Military Ball.....	July 1, 1903	C-50619	July 25, 1930	R-9791	26	
27 The Moon Will Help You Out.....	Aug. 18, 1903	C-51047	July 25, 1930	R-9799	27	
28 Never Mind Bo Peep.....	July 8, 1903	C-53343	Sept. 3, 1930	R-10025	28	
29 Our Castle in Spain.....	Dec. 7, 1903	C-60317	Dec. 10, 1930	R-11796	29	
30 Song of the Poet.....	Aug. 22, 1903	C-53509	Sept. 3, 1930	R-10026	30	
31 With Downcast Eye—Renewals.....	May 28, 1904	C-48664	July 25, 1930	R-9797	31	
32 I Can't Do That Sum—Polka Two Step Arr. by Karl Hoschna.....	June 11, 1904	C-72377				

32 Original Copyrights

31 Renewals

63 Copyrights Total

CONDENSATION OF PLAINTIFFS' DEPOSITION EXHIBIT 29

[Vol. 1600]

This exhibit contains a list of approximately 125 copyrighted compositions, of which the words or music were written by Edgar Leslie. Specimen compositions giving the collaborator, the publisher, the date of copyright, and the show, if any, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Show
A Little Bit Independent But Easy on the Eyes	Joe Burke	Bregman Vocco & Conn	10/22/35		
America I Love You	Archie Gottler	Kalmar Puck & Abrahams Consolidated	9/3/15		
Among My Souvenirs	Horatio Nicholls	DeSylva Brown & Henderson	10/5/27		
At A Perfume Counter	Joe Burke	Bregman, Vocco & Conn	1/27/38		Casa Manana
California and You	Harry Puck	Kalmar Puck & Abrahams Consolidated	4/18/14		
For Me and My Gal	E. Ray Goetz-George W. Meyer	Waterson Berlin & Snyder	1/24/17	1/26/37— Edgar Leslie	
Good Luck Mary	A. Bryan-A. Plantadosi	Dora Cooper	12/16/09	12/13/37— Al Plantadosi 12/14/37— Edgar Leslie	
In A Little Gypsy Tea Room	Joe Burke	Joe Morris Music Co.	5/8/35		Cameo Kirby
It Looks Like Rain in Cherry Blossom Lane	Joe Burke	Joe Morris Music Co.	5/10/37		
Me and the Man in the Moon	Jimmie Monaco	Bregman Vocco & Conn	11/5/28		
Moon over Miami	Joe Burke	Irving Berlin Inc.	12/17/35		
Oh What A Pal was Mary	Bert Kalmar Pete Wendling	Waterson Berlin & Snyder	7/8/19		
On Treasure Island	Joe Burke	Joe Morris Music Co.	10/4/35		
Robins and Roses	Joe Burke	Irving Berlin, Inc.	4/3/36		
Romance	Walter Donaldson	Bregman, Vocco & Conn	12/31/29		
When the Grown Up Ladies Act Like Babies	Joe Young Maurice Abrahams	Maurice Abrahams Music Co.	10/17/14		
I'm A Yiddish Cowboy	Al Plantadosi	Shapiro Bernstein & Co.	4/8/08	1/31/36— Al Plantadosi 2/6/36— Edgar Leslie	
He'd Have to Get Out and Get Un-	Halsey K. Mohr				

[fol. 1601] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ANNE PAUL NEVIN

UNITED STATES OF AMERICA,
State of Maine,
County of Hancock, ss:

Anne Paul Nevin, being duly sworn, deposes and says:

I am one of the complainants herein, and the widow of Ethelbert Nevin, who departed this life in 1901. He was a pianist and composer, and his memory is one of the bright spots in American music. He was born in 1862 in Edgeworth, Pa., and in his comparatively short life he composed some of the most famous songs in this nation. To have done nothing else than to have composed "The Rosary" and "Mighty Lak a Rose" would have been sufficient to have established his reputation.

In his lifetime, my husband never received any money whatever from the public performance for profit of his copyrighted musical compositions. It was not until I joined the American Society, long after his death, that I began to benefit from the royalties from the licensing for public performance for profit on his compositions.

With respect to many of the copyrights, the original term has expired and I have renewed the term of the copyrights in my name, as his widow, pursuant to the provisions of the Copyright Act.

I have been receiving substantial royalties from the Society, and since 1928 I have received in excess of \$4,000 each year from the Society as my participation in the licensing for public performance for profit of my husband's songs. This is a very substantial sum of money to me, and were it not for the Society I would not be in receipt of anything for these public performing rights. I depend for my livelihood chiefly upon this income from the Society.

Herewith is a list of the various works that my husband wrote from 1874 down to the time of his death, as well as the posthumous works published after his death, with the years in which they were published:

[fol. 1603]	1874	
Lilian Polka.....		Piano
	1880	
Apple Blossoms.....		Song and Dance
	1881	
The Lovers (In the garden were leisurely walking).....		Song
The Milk Maid (Shame upon you, Robin).....		Song
	1886	
I once had a sweet little doll, dears.....		Song
Stars of the summer night.....		Song
Summer Longings (Ah! My heart is weary waiting).....		Song
When all the world is young, lad.....		Song
	1887	
Bed-time Song (Sway to and fro in the twilight gray).....		Song
Cradle Song (Sleep, baby, sleep).....		Song
	1888	
Op. 2, Sketch Book		
1. Gavotte.....		Piano
2. Im wunderschönen Monat Mai ('Twas in the lovely month of May).....		Song
3. Love Song.....		Piano
4. Du bist wie eine Blume (Oh! fair, and sweet and holy).....		Song
5. Berceuse.....		Piano
6. Lehn' deine Wang (Oh! let thy tears fall fast with mine).....		Song
7. Serenata.....		Piano
8. Oh! that we two were maying.....		Song
9. Valse Rhapsodie.....		Piano
10. In winter I get up at night.....		Song
11. Of speckled eggs the birdie sings.....		Song
12. Dark brown is the river.....		Song
13. The night has a thousand eyes.....		Mixed chorus and violin obbligato
Op. 3, Three Songs		
1. Deep in a rose's glowing heart.....		Song with violin and 'cello obbligati
2. One spring morning.....		Song with violin and 'cello obbligati
3. Doris.....		Song with violin and 'cello obbligati
Serenade (Good-night, good-night, beloved).....		Song
May Day Dance.....		Unison chorus, with piano 4-hand acc.
[fol. 1604]	1889	
Op. 4, Five Songs		
1. Herbstgefühl (Autumn sadness).....		Song
2. Chanson des Lavandieres (What care I, unwilling).....		Song
3. 'Twas April.....		Song
4. Raft Song (From upwards my raft drifts down).....		Song
5. Before the daybreak.....		Christmas Carol
The Earth has Grown Old.....		Christmas Carol
Everywhere, Everywhere, Christmas Tonight.....		Christmas Carol
Wynken, Blynken and Nod.....		Solo and chorus of mixed voices with piano 4-hand acc.
	1890	
Op. 6, Three Duets for the Piano		
1. Valse Caprice.....		Piano, four hands
2. Country Dance.....		" " "
3. Mazurka.....		" " "
Op. 7, Four Pieces		
1. Valse Gentile.....		Piano
2. Slumber Song.....		Piano
3. Intermezzo.....		Piano
4. Song of the Brook.....		Piano

- Jesu, Jesu, Miserere..... Sacred Song
 The Silent Skies are Full of Speech..... Christmas Carol
 Nunc Dimittis..... Mixed Voices
 Benedictus..... Mixed Voices
 Jubilate..... Mixed Voices
 1891
 Op. 8, 1. Melody..... Violin and Piano
 2. Habanera..... Violin and Piano
 Une Vieille Chanson (If a lovely lawn there be)..... Song
 Barcarolle (The crimson glow of sunset fades)..... Men's Voices
 Op. 12, Five Songs
 1. A Summer Day..... Song
 2. Beat upon mine little heart..... Song
 3. In a Bower..... Song
 4. Little Boy Blue..... Song
 5. At Twilight..... Song
 Op. 13, Water Scenes
 1. Dragon Fly..... Piano
 2. Ophelia..... Piano
 3. Water Nymph..... Piano
 4. Narcissus..... Piano
 5. Barcarolle..... Piano
 [fol. 1605] 1892
 The Rhine and the Moselle..... Chorus of Men's Voices
 Op. 16, In Arcady
 1. A Shepherd's Tale..... Piano
 2. Shepherds All and Maidens Fair..... Piano
 3. Lullaby..... Piano
 4. Tournament..... Piano
 Op. 17, Three Songs
 1. Hab' ein Roslein (The Rosebud)..... Song
 2. Le Vase Brise (The Vase)..... Song
 3. Rappelle-toi (Remember well)..... Song
 Op. 18, Two Etudes
 1. In the form of a Romance..... Piano
 2. In the form of a Scherzo..... Piano
 1893
 Barcarolle..... Violin and Piano
 Evening Song..... Chorus of Mixed Voices
 My Love..... Chorus of Mixed Voices
 Op. 20, A Book of Songs
 1. A Fair, Good Morn..... Song
 2. Sleep, little Tulip..... Song
 3. Ev'ry Night..... Song
 4. Airly Beacon..... Song
 5. When the Land Was White with Moonlight..... Song
 6. A Song of Love..... Song
 7. Nocturne (Up to her chamber window)..... Song
 8. Dites-moi (Tell me)..... Song
 9. Orsola's Song..... Song
 10. In the Night..... Song
 When Christmas Comes..... Christmas Carol
 1894
 The Merry, Merry Lark..... Song
 La Vie (Life)..... Song
 Ti Saluto (Thine my greeting)..... Song
 1896
 Op. 21, May in Tuscany
 1. Arlecchino..... Piano
 2. Notturmo (In Boccaccio's Villa)..... Piano
 3. Barchetta..... Piano
 4. Misericordia..... Piano
 5. Il Rusignuolo (In my neighbor's garden)..... Piano
 6. La Pastorella (Montepiano)..... Piano

1050

Op. 22, Two Songs		
1. Rechte Zeit (Time enough!)	.....	Song
2. Madel, wie bluht's (Maiden, how sweet)	.....	Song
[fol. 1606]	1898	
The Rosary	.....	Song
Life Lesson (There, little girl, don't cry)	.....	Song
My Love's Waitin'	.....	Song
Op. 25, A Day in Venice		
1. Alba (Dawn)	.....	Piano
2. Gondolieri (Goldoliers)	.....	Piano
3. Canzone Amorra (Love Song)	.....	Piano
4. Buona Notte (Good Night)	.....	Piano
March of the Pilgrims, for the Knight Templars	.....	Piano
	1899	
Op. 28, Songs from Vineacre		
1. A Necklace of Love	.....	Song
2. Sleeping and Dreaming	.....	Song
3. The Dream-maker Man	.....	Song
4. Ein Liedchen	.....	Song
5. My Desire	.....	Song
6. The Nightingale's Song	.....	Song
7. La Lune Blanche	.....	Song
8. Ein Heldenlied	.....	Song
Op. 29, Captive Memories	.....	Bar. Solo, Solo Quartet and Reader; Song Cycle
Op. 30, En Passant		
1. A Fontainebleau	.....	Piano
2. In Dreamland	.....	Piano
3. Napoli	.....	Piano
4. At Home (A June Night in Washington)	.....	Piano
	1900	
Memorial Day	.....	Mixed Voices
	Posthumous Works	
	1901	
An African Love Song	.....	Song
Mighty lak' a rose	.....	Song
To Anne	.....	Song
At Rest	.....	Song
The Woodpecker	.....	Song
The Four Seasons	.....	Mixed Voices
	1902	
O'er Hill and Dale		
'Twas a lover and his lass	.....	Piano
The Thrush	.....	Piano
Love is a-straying, ever since maying	.....	Piano
The Lark is on the wing	.....	Piano
The Quest	.....	Cantata
	1907	
Sweetest Eyes were ever seen	.....	Song
[fol. 1607]	1909	
Wedding Morn	.....	Song
	1913	
Marguerites	.....	Song
Rain Song	.....	Song
I Fear Thy Kisses, Gentle Maiden	.....	Song

A very complete account of my husband's life and works is to be found in the book entitled "The Life of Ethelbert Nevin" by Vance Thompson, published and copyrighted by the Boston Music Company in 1913. If the State Statute is enforced against me, I will lose the moneys that I receive from the Society, and will be without means of livelihood.

I am 70 years of age, and I ask the protection of this Court of Equity to preserve me in my declining years against want and poverty, in memory of a man who has enriched this nation with his genius.

As evidence of the perennial appeal of my husband's works, "Mighty Lak' a Rose" was reported performed over the radio in 1935 over 6,000 times and "The Rosary" was reported performed over the radio that year over 3,000 times, including performances in the State of Nebraska. I have obtained these figures from the record furnished to me by the Society, which in turn is furnished to it by the two principal radio networks. It does not purport to represent all of the actual performances given by radio broadcasters throughout the country. I have frequently heard many other songs of my husband's performed over the radio, but have found no report made of them by the broadcasters. These songs have all been and are now being performed within the State of Nebraska.

Nevertheless, from these meagre reports it is apparent that the radio broadcasters are making a very substantial use of my husband's songs. Hotels, motion picture theatres, cabarets and dance halls make no record, so far as I know, of public performances of musical compositions, including my husband's, so that it is impossible to estimate the extent of such use. Alone and unaided, it would be impossible for me to license the public performance for profit of my husband's compositions. I have no financial resources for that purpose; I could not engage lawyers or investigators throughout the country, and I would be utterly helpless.

It is for that reason that I joined the Society, knowing that in the combined strength of those similarly situated, we could protect the public performance for profit of our works against piracy and infringement.

If the State Statute should be enforced, it would make it impossible for the Society to operate in that State, and I, and others similarly situated, would be in the same position that my husband was in at the time of his death.

The practical effect of the State Statute is to give to selfish and powerful groups the right to exploit, without compensation, my husband's works and the works of other authors and composers.

The Copyright Statute carefully provided that the widow of an author was to have the first right to renew the original

term of copyright. It was the public policy of the Government of the United States, realizing that authors pay much more attention to the creation of their works than to the business of obtaining money therefrom, to protect the widows and families of authors by that provision of the Copyright Act. That beneficent provision and public policy of the Government would be utterly destroyed by the State Statute.

[fol. 1609] As the initial terms of the respective copyrights in the works of my late husband expire, the renewal rights vest in me, and I have exercised such rights with respect to certain compositions and am continuing and will continue to exercise such rights with respect to other compositions, from time to time, as such rights accrue to me.

Under the Copyright Law, I have the right, when each renewal term vests in me, to transfer to a publisher only the publishing rights and to reserve to myself, or to the Society, or to others, the public performing rights or any other rights in such works for limited periods or for the balance of the term of copyright.

Under the State Statute, this right is denied to me. I must grant to my publisher, not only the right of publication, but all other rights under the copyright, since he is given the sole power to fix the value and price of public performances for profit and other uses of my copyrighted works in the State of Nebraska.

This is an arbitrary and unjustifiable interference with my right to make contracts and with the rights granted to me under the Copyright Law of the United States, and will seriously impair the value of my existing rights in copyrights, as well as my right to renew copyrights with respect to which the original term has not yet expired.

Anne Paul Nevin.

Sworn to before me this 10th day of June, 1937.

Forrest B. Snow, Notary Public. My commission expires May 9, 1942. (Seal.)

STATE OF MAINE,
County of Hancock, ss:

[fol. 1610] IN UNITED STATES DISTRICT COURT, DISTRICT OF
NEBRASKA, LINCOLN DIVISION

CLERK'S CERTIFICATE

I, Mary A. Mullen, Clerk of the District Court of the United States for the District of Nebraska, in compliance with Designation or Praecipe filed by Counsel for Appellees, on the 16th day of December, 1940, hereby certify that Items 1 to 12, inclusive, of the Praecipe, are true and correct copies of the originals now on file in this office; that Plaintiffs' Exhibit No. 13 is a true and correct copy of the original list of Irving Caesar's Compositions annexed to the deposition of Irving Caesar; that Plaintiffs' Exhibit 18 is a true and correct copy of the original list of George W. Meyers' Compositions annexed to the deposition of George W. Meyer; that Items No. 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Praecipe are true copies of Exhibits 19, 20, 21E, 22, 23, 24, 25, 26 and 27 annexed to the depositions of Ella Herbert Bartlett; and that said Exhibits 19 and 20 are identical with Schedules VI and VII annexed to the affidavit of Ella Herbert Bartlett submitted in support of the plaintiffs' motion for temporary injunction, and that Exhibits 22 to 27 inclusive are identical with Schedules I to V inclusive annexed to the Affidavit of Ella Herbert Bartlett. And I further certify that said affidavit, including the said exhibits herein referred to, was adopted and incorporated in the answer of Gene Buck to Interrogatory No. 17 submitted by the defendants to him. I further certify that in answer to Interrogatory No. 17 submitted to Gene Buck by the defendants he incorporated and made a part of his answer the affidavit of Anne Paul Nevin verified on June 8, 1937, submitted in support of the plaintiffs' motion for temporary injunction, a true copy of which is included herein.

I further certify that Plaintiffs' Exhibit No. 29 is a photostatic copy of the original list of compositions by Edgar Leslie; that Exhibit No. 1 (described in Item 25 of this Praecipe), is a photostatic copy of the original list of compositions by Jerome Kern introduced in his deposition; that Exhibit No. 4 is a photostatic copy of Exhibit No. 4 (original) introduced in the deposition of Sigmund Romberg; that Plaintiffs' Trial Exhibit No. 1 (described in Item 27 of this Praecipe) is a true and correct copy of Plaintiffs' Trial Exhibit No. 1, on file in this Court.

I further certify that all the exhibits mentioned in Items 28, 29 and 34 of this Praeipie, are true and correct copies of all the exhibits attached to Appellees' Counter-Designation (requested in Item 61), filed on September 21, 1940.

I further certify that Item 30 is a true and correct copy of the original Plaintiffs' Trial Exhibit No. 17; that Item 31, is a true and correct copy of the original Plaintiffs' Trial Exhibit No. 18; that Item 32 is a true and correct copy of the original Plaintiffs' Trial Exhibit No. 20; that Item 33 is a true and correct copy of the original Exhibit No. 21; that Item 35 is a true and correct copy of the original Plaintiffs' Exhibit No. 29; that Item 36 is a true and correct copy of the original of Plaintiffs' Exhibit No. 32, with the exception of "Let's Go Country" which is not shown in the original exhibit.

I further certify that Items 37 to 53, inclusive, are true and correct copies of plaintiffs' original exhibits numbered 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 49, 53, 62 and 64, and of defendants' exhibits numbered 45, 52 and 54.

I further certify that the exhibits requested and enumerated in Items 54 to 57, inclusive, are true and correct copies of the original exhibits numbered 58, 59, 60 and 61, attached to the Interrogatories of Walter S. Fischer, Saul Bornstein, Gene Buck and Gustav Schirmer.

I further certify that Item 58 is a true and correct copy of all docket entries on the Appearance Docket, to and including September 17, 1940, in this case; that Item 59 is a true and correct copy of the original Designation, with proof of service, filed in this Court on the 26th day of July, 1940; that Item 60 is a true and correct copy of the original Counter-Designation, with proof of service, filed in this Court on the 31st day of July, 1940; that Item 61, is a true and correct copy of the original Counter-Designation, together with exhibits annexed, filed herein on the 21st day of September, 1940, in compliance with Order of August 20, 1940, together with proof of service, filed herein on December 16, 1940.

[fol. 1612] I further certify that Item 62 is a true and correct copy of the Praeipie, or Designation for record, filed herein on December 16, 1940, together with proof of service thereof filed herein on December 21, 1940, in compliance with which we have compiled and assembled this record, in the matter of Gene Buck, etc., et al., versus Harry R. Swanson, etc., et al., No. 562 Equity, all of which original files and records are now in my custody as Clerk of this Court.

Witness my hand as Clerk, and the Seal of said Court,
at Lincoln, Nebraska, this 23d day of December, 1940.

Mary A. Mullen, Clerk, by J. B. Nickerson, Deputy.

[fol. 1613] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON—Filed December
24, 1940

Point No. I

While copyrighted vocal and instrumental musical compositions may grant individual monopolies, they cannot be unitedly exercised to restrain competition and to fix prices; and a suit to enjoin such combination to restrain commerce and trade in copyrighted musical compositions is not one arising under the Copyright laws of the United States.

Point No. II

There is nothing in the Constitution of the United States which precludes a state from adopting and enforcing statutes which secure competition and preclude combinations which tend to defeat it; and the state is the sole judge, within reasonable limitations, of what laws shall be enacted for the protection and welfare of its people and as to when and how the police power of the state shall be exercised.

Point No. III

The state may pass such reasonable regulations in reference to the sale and use of copyrighted material by the individual owner and his publisher within the State of Nebraska as its legislature may deem proper, when the enactment is not prohibited by the Copyright Act nor in derogation of it.

Point No. IV

A state statute prohibiting monopolies in copyrighted vocal and instrumental musical compositions does not militate against the commerce clause of the Federal Constitution when the acts of the unlawfully combining conspirators are so carried on as to be intra-state transactions.

The penalties of an anti-monopoly statute may not be considered so drastic as to be non-enforceable and to deprive those affected by it of the due process and equal protection clauses of the State and Federal Constitutions, when the act itself gives full and complete protection in the courts, and when the penalties for violation are from \$1.00 to \$5,000, and when the criminal provisions provided are misdemeanors with penalties not to exceed one year in prison, and when such fine or imprisonment may be imposed only after a full and complete hearing on the merits in the courts of the state, and when jury trial is guaranteed by the act and the Constitution of the state. The Court may consider similar penalties in other anti-monopoly statutes in Nebraska and in the nation as an aid in sustaining the act.

Point No. VI

Where there is a conflict in the considered opinion of the Court and the findings of fact, conclusions of law, and decree subsequently entered, the opinion will be considered supererogatory; and the findings of fact, conclusions of law, and decree only will be considered on appeal.

Point No. VII

If a three-judge federal court, sitting by virtue of provisions of Section 266 of the Judicial Code, in its findings of fact, conclusions of law, and decree makes no finding, conclusion, or decree that a state statute permanently enjoined is violative of a Federal statute or the Federal or State Constitution, the Supreme Court of the United States in reviewing the case is justified in reversing the cause, dissolving the permanent injunction, and ordering the case dismissed because the basis for the three-judge federal court's jurisdiction is the repugnancy of the act in question to a Federal statute or some provision of the Federal Constitution.

If on appeal to the United States Supreme Court, in an action brought under Section 266 of the Judicial Code, wherein the lower court granted a permanent injunction, the appellate court should consider an opinion rendered by the

lower court previous to the findings of fact, conclusions of law, and decree, holding that one subsection of the Act in question was inseparable from the balance of the Act, and was the inducing cause for its passage, and for that reason declared the entire Act non-enforceable, then the appellate court should re-examine such question and sustain the enforceability of all the balance of the Act; when it is clear that after striking out the unconstitutional part of the statute, the residue is intelligible, complete, and capable of execution. Especially is this true when the state court has never passed upon the question.

Point No. IX

The issue of whether or not a particular subsection of an act was the inducing cause for its passage is a matter of legislative intent which must be pleaded in order to raise the issue; and if not so raised, the trial court errs in any findings or ruling on the subject. It is proper for the parties adversely affected by such erroneous ruling to call the trial court's attention thereto in a motion for rehearing and a showing by affidavits of a majority of all the legislators who voted for the act that said subsection was not the inducing cause for its passage nor for their affirmative votes.

William J. Hotz, Attorney for Appellants; Special Assistant to the Attorney General of Nebraska.
1530-5 City National Bank Building, Omaha, Nebraska.

[fol. 1616] IN SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940.

No. 312.

PRAECIPE TO THE CLERK OF THE SUPREME COURT OF THE
UNITED STATES.—Filed December 24, 1940.

To the Honorable Clerk of the Supreme Court of the United States:

1. The appellants have heretofore filed in the United States District Court, District of Nebraska, Lincoln Division, their designation of the record on appeal with praecipe therefor, and served the same upon the appellees, and made due return thereof on the 27th day of July, 1940.

2. That in addition to said designation of record and praecipe therefor, being a condensed and abbreviated transcript of the original record of the trial of said cause, there was filed and served on the appellees, and as a part thereof, a concise statement of the points to be relied upon for reversal upon appeal together with authorities in support in accordance with Rule 75 of the Code of Civil Procedure, and which rule is referred to and made a part of Rule 10 (2) of the Supreme Court of the United States; that all the appeal papers required by the rules of the Supreme Court of the United States and the applicable rules of Civil Procedure were compiled in three (3) volumes and indexed and certified by the United States District Court and forwarded to the Clerk of the Supreme Court of the United States and duly docketed on August 6, 1940.

3. Appellants respectfully refer to the said transcript of record on appeal and the index thereof in reference to the foregoing matters.

[fol. 1617] 4. For a proper consideration of the case on appeal, the appellants desire that said condensed and abbreviated record, consisting of said three volumes, shall constitute the record on appeal; but there may be eliminated therefrom the following items:

(a) Jurisdictional statement with all the exhibits attached, which has heretofore been printed, served, and ruled upon, the Court noting probable jurisdiction on December 9, 1940.

(b) Appellees' statement opposing jurisdiction and motion to dismiss or affirm with brief in support, filed July 3, 1940, and the appellants' brief in opposition to the motion to dismiss or affirm filed July 16, 1940, which have been printed and served.

(c) Appellants' designation of law points to be relied upon for reversal with list of cases in support of each point; and in lieu thereof, the enclosed law points relied upon for reversal, which are the same law points relied upon for reversal filed in the Supreme Court of the United States when the cause was docketed on August 6, 1940, without the inclusion of the citations in support of each law point. The law points relied upon for reversal submitted herewith, together with the assignment of errors

contained in Volume I, pages 77-84, shall be printed and shall constitute the law points and matters to be relied upon by the appellants for the reversal upon appeal.

5. In the event the rules of the Supreme Court of the United States require the reprinting of any part or all the matters set forth in Subsections (a), (b), and (c) above, we hereby request the Clerk to include them in the printed transcript of the record on appeal even though elsewhere printed.

6. Since the compilation and service of the said record on appeal, there has been proceedings in the lower court in reference to the settlement of the record, consisting of three volumes, as filed with the Clerk of the Supreme Court of the United States on August 6, 1940, and these settlement proceedings had before the three-judge federal court which tried the cause in the lower court consisted of three (3) counter-designations of record served and filed by the appellees on July 26, 1940, on July 31, 1940, and on September 21, 1940, with resistances and objections thereto filed by the appellants on July 31, 1940 and on October 8, 1940. These matters in reference to the settlement of the record were finally determined by the said court on October 12, 1940, and order in reference thereto filed with the Clerk of [fol. 1618] the United States District Court on October 15, 1940, and a certified copy thereof filed with the Clerk of the Supreme Court of the United States in this cause.

(a) The said above described order, settling the three volume record as condensed and abbreviated and filed with the Clerk of the Supreme Court of the United States on August 6, 1940, should be included in the record on appeal as a part of Volume I thereof together with a copy of this praecipe.

William J. Hotz, Attorney for Appellants; Special
Assistant to the Attorney General of Nebraska.
1530-5 City National Bank Building, Omaha, Ne-
braska.

[fol. 1619] [File endorsement omitted.]

[fol. 1620] IN SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF THE
RECORD—Filed January 22, 1941

Appellees, pursuant to Rule 13, Paragraph 9 of the Rules of the United States Supreme Court, designate the following parts of the record as submitted by appellants, to be printed in addition to those designated by appellants:

1. Exhibits "A", "B", "C", "D", "E", "F", "G" and "H" annexed to the bill of complaint.

Appellants' proposed record separates these exhibits from the bill of complaint itself and places them in other parts of the record. These exhibits should all be printed following page 49 to Volume I of Appellants' Record. These exhibits now appear in the following parts of the record as submitted by appellants:

Exhibits "A" to "D" of the complaint, inclusive, appear in Volume III, pp. 2-21 of Appellants' Record;

Exhibit "E" of the complaint appears in Volume I, pp. 144-158 of Appellants' Record;

Exhibits "F" to "H" of the complaint, inclusive, appear in Volume III, pp. 23-28 of Appellants' Record.

It is not necessary, of course, to duplicate the printing of these exhibits in other parts of the record.

[fol. 1621] 2. The opinions, orders, findings and decree in Volume I, pp. 98-118, inclusive, of Appellants' Record.

3. Defendants' motion for a new trial, and order denying same, in Volume I, pp. 119-43, inclusive, of Appellants' Record.

4. Appellants' "Statement In Lieu Of The Designation Required By Supreme Court Rule 13 In Reference To Designation of Law Points," in Volume I, pp. 85-91, inclusive, of Appellants' Record.

5. In the event that this Honorable Court should issue its writ of certiorari directed to the United States District Court for the District of Nebraska, Lincoln Division, commanding that court to certify and send to this Court the papers described in appellees' suggestion of diminution of the record heretofore filed herein on January 11, 1941, appellees will designate such further parts of the record

for printing as are contained in the annexed proposed designation of additional parts of the record.

Dated, January 20, 1941.

Thomas G. Haight, Louis D. Frohlich, Herman Finkelstein, Counsel for Appellees.

[fol. 1622] IN SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF THE
RECORD—Filed January 22, 1941

Appellees, pursuant to Rule 13, Paragraph 9 of the Rules of the United States Supreme Court, designate the following parts of the record to be printed in addition to those designated by appellants:

1. Transcript of evidence upon the trial, held September 18, 19, 20 and 21, 1939, pages 1-503, inclusive, in question and answer form (Add. Tr. 1-503).*
2. Depositions of Sigmund Spaeth, Abraham Schwartz, Walter S. Fischer, Irving Caesar, Edwin H. Morris, George W. Meyer, Ella Herbert Bartlett, Will Von Tilzer, Edgar Leslie, Jerome Kern and Sigmund Romberg, all in question and answer form (Add. Tr. 504-1083).
3. The excerpts from Plaintiffs' Exhibit 13 annexed to the deposition of Irving Caesar (list of Irving Caesar's compositions) contained in the condensation of such exhibit annexed hereto and marked "Condensation of Plaintiffs' Deposition Exhibit 13." If such condensation is unsatisfactory to appellants, appellees designate, in the alternative, the entire exhibit (Add. Tr. 1310-1319).
4. The excerpts from Plaintiffs' Ex. 18 annexed to the deposition of George W. Meyer (list of George W. Meyer's compositions) contained in the condensation of such exhibit annexed hereto and marked "Condensation of Plaintiffs' Deposition Exhibit 18." If such condensation is unsatisfactory to appellants' appellees designate, in the alternative, the entire exhibit (Add. Tr. 1320-1331).
5. Plaintiffs' Ex. 19 annexed to the deposition of Ella Herbert Bartlett (contract between Victor Herbert and M. Witmark & Sons 6/8/10) (Add. Tr. 1361-66).

*Note: References to "Add. Tr. —" refer to pages of Additional Transcript filed in this Court by Appellees.

[fol. 1623] 6. Plaintiffs' Ex. 20 annexed to the deposition of E. H. Bartlett (Victor Herbert contract 4/2/14) (Add. Tr. 1367-72).

7. Plaintiffs' Ex. 21-E annexed to the deposition of E. H. Bartlett (contract between Victor Herbert and T. B. Harms) (Add. Tr. 1332-38).

8. Plaintiffs' Ex. 22 annexed to the deposition of E. H. Bartlett (copyrights on "Red Mill") (Add. Tr. 1349-50).

9. Plaintiffs' Ex. 23 annexed to the deposition of E. H. Bartlett (copyrights on "Naughty Marietta") (Add. Tr. 1351-2).

10. Plaintiffs' Ex. 24 annexed to the deposition of E. H. Bartlett (copyrights on "Mademoiselle Modiste") (Add. Tr. 1353-5).

11. Plaintiffs' Ex. 25 annexed to the deposition of E. H. Bartlett (renewals of copyrights on "Mademoiselle Modiste") (Add. Tr. 1356-7).

12. Plaintiffs' Ex. 26 annexed to the deposition of E. H. Bartlett (renewals of copyrights on "Red Mill") (Add. Tr. 1358-9).

13. Plaintiffs' Ex. 27 annexed to the deposition of E. H. Bartlett (renewals of copyrights on "Babes in Toyland") (Add. Tr. 1360).

14. The excerpts from Plaintiffs' Ex. 29 annexed to the deposition of Edgar Leslie (list of Edgar Leslie's compositions) contained in the condensation of such exhibit annexed hereto and marked "Condensation of Plaintiffs' Deposition Exhibit 29." If such condensation is unsatisfactory to appellants, appellees designate, in the alternative, the entire exhibit (Add. Tr. 1382-3).

15. The excerpts from Plaintiffs' Ex. 1 annexed to the deposition of Jerome Kern (list of Jerome Kern's compositions) (Add. Tr. 1430-1). If such condensation is unsatisfactory to appellants, appellees designate in the alternative, the entire exhibit (Add. Tr. 1384-1400).

16. The excerpts from Plaintiffs' Ex. 4 annexed to the deposition of Sigmund Romberg (list of Sigmund Romberg's compositions) (Add. Tr. 1432-3). If such condensation is unsatisfactory to appellants, appellees designate, in the alternative, the entire exhibit (Add. Tr. 1401-10).

17. The excerpts from Plaintiffs' Trial Exhibit 1 (list of Gene Buck's compositions) (Add. Tr. 1434-5). If such condensation is unsatisfactory to appellants, appellees designate,

nate, in the alternative, the entire exhibit (Add. Tr. 1084-9).

18. Plaintiffs' Tr. Ex. 15 (in part). (Add. Tr. 1436-50).

19. Plaintiffs' Tr. Ex. 16 (in part). (Add. Tr. 1452-3).

[fol. 1624] 20. Plaintiffs' Tr. Ex. 17 (tabulation of receipts from Nebraska—January 1, 1928 to June 30, 1939). (Add. Tr. 1090).

21. Plaintiffs' Tr. Ex. 18 (schedule of cost of operating and commissions paid in Nebraska—1932-37). (Add. Tr. 1091).

22. Plaintiffs' Tr. Ex. 20 (schedule of sheet music sales which grossed over a million copies). (Add. Tr. 1092-4).

23. Plaintiffs' Tr. Ex. 21 (schedule of licenses in effect 1922-39). (Add. Tr. 1095).

24. Plaintiffs' Tr. Ex. 22 (Page 1122 and first twenty lines of Page 1123 of Copyright Hearings, 1936). (Add. Tr. 1455-6).

25. Plaintiffs' Tr. Ex. 29 (Table 19 of Federal Communications Commission Bulletin). (Add. Tr. 1096).

26. Plaintiffs' Tr. Ex. 32 (sample sheet from ASCAP Index). (Add. Tr. 1097).

27. Plaintiffs' Tr. Ex. 33 (circular explaining ASCAP Index). (Add. Tr. 1098-1105).

28. Plaintiffs' Tr. Ex. 35 (advertisement of Lang-Worth Feature Programs, Inc.) (Add. Tr. 1106).

29. Plaintiffs' Tr. Ex. 36 (chart showing Society's accounts with foreign societies). (Add. Tr. 1107).

30. Plaintiffs' Tr. Ex. 38 (list of William J. Hill's compositions). (Add. Tr. 1108-11).

31. Plaintiffs' Tr. Ex. 39 (list of John Philip Sousa's compositions). (Add. Tr. 1112-23).

32. The excerpts from Plaintiffs' Tr. Ex. 40 (list of Oley Speaks' compositions) (Add. Tr. 1425, 1. 13-41). If such condensation is unsatisfactory to appellants, appellees designate, in the alternative, the entire exhibit (Add. Tr. 1124-7).

33. The excerpts from Plaintiffs' Tr. Ex. 41 (list of Deems Taylors' compositions) (Add. Tr. 1425, 1. 42-51). If such condensation is unsatisfactory to appellants, appellees designate, in the alternative, the entire exhibit (Add. Tr. 1128-31).

34. Plaintiffs' Tr. Ex. 42 (1921 contract between Society and Malec Bros.). (Add. Tr. 1132).

[fol. 1625] 35. Plaintiffs' Tr. Ex. 43 (1922 contract between Society and Malec Bros.). (Add. Tr. 1133).

36. Plaintiffs' Tr. Ex. 44 (letter from Amusement Owners Protective Association of Nebraska). (Add. Tr. 1134).

37. Plaintiffs' Tr. Ex. 49 (pages 140-143 of "Radio Advertising" for September, 1939). (Add. Tr. 1135-38).

38. Plaintiffs' Tr. Ex. 53 (letter of May 12, 1939 from E. N. Blazer to Eppley Hotels Co.). (Add. Tr. 1139-40).

39. Plaintiffs' Tr. Ex. 62 (list of suits filed by the Society in Nebraska). (Add. Tr. 1141-52).

40. Plaintiffs' Tr. Ex. 64 (contract between SESAC and Station WOW). (Add. Tr. 1153-5).

41. Defendants' Exhibit 45 (agreement between National Broadcasting Company and Station WOW). (Add. Tr. 1156-9).

42. Defendants' Ex. 52 (form of first notice sent by Society to infringers). (Add. Tr. 1160-63).

43. Defendants' Ex. 54 (agreement between Columbia Broadcasting System and Station KOIL dated April 25, 1938). (Add. Tr. 1164-69).

44. Defendants' Ex. 58 (answers to interrogatories propounded to Walter Fischer and exhibits 1-10, inclusive, thereto annexed). (Add. Tr. 1275-92).

45. Defendants' Ex. 59 (answers to interrogatories propounded to Saul Bornstein and exhibits 1-10, inclusive, thereto annexed). (Add. Tr. 1293-1308).

46. Defendants' Ex. 60 (answers to interrogatories propounded to Gene Buck and exhibits 1, 2 and 3 thereto annexed). (Add. Tr. 1171-1250; 1373-81).

47. Defendants' Ex. 61 (answers to interrogatories propounded to Gustave Schirmer and exhibits 1-10, inclusive, thereto annexed). (Add. Tr. 1251-74).

48. Docket Entries (Add. Tr. 1464-70).

49. Counter-Designation filed pursuant to order of August 20, 1940, omitting duplication of all items hereinabove otherwise designated for printing (Add. Tr. 1421-57).

50. Certificate of the Clerk of the District Court, dated December 23, 1940, transmitting additional parts of the record to this Court (Add. Tr. 1472-4).

58. Out, order of Feb. 3.

61. Pages 1421-1429 not to be printed by order of Feb. 3.

Dated, January 20, 1941.

[fol. 1626] Thomas G. Haight, Louis D. Frohlich,
Herman Finkelstein, Counsel for Appellees.

[fols. 1627-1628] UNITED STATES OF AMERICA

State of New York,
County of New York, ss:

Herman Finkelstein, being duly sworn, deposes and says:

That he is counsel for the Appellees in the above entitled case and that he served the Appellees' "Designation of Additional Parts of the Record" on Walter R. Johnson, Esquire, Attorney General, William J. Hotz, Esquire, Special Assistant to the Attorney General and Andrew Bennett, Esquire, Attorneys for Appellants, by depositing in the mail of the United States, in a Post Office Box regularly maintained by the Government of the United States at No. 1450 Broadway, Borough of Manhattan, City of New York, and under the care of the General Post Office in the Borough of Manhattan, City of New York, a true copy of the same on this 20th day of January, 1941, addressed to said Messrs. Johnson & Hotz at 1530 City National Bank Building, Omaha, Nebraska, and to said Mr. Bennett at 917-15th Street, NW, Washington, D. C. with the required postage affixed thereto.

Subscribed and sworn to before me this 21st day of January, 1941. Herman Finkelstein. Rose E. Cohen, Notary Public, Queens County. Queens Co. Clk. No. 3699, Reg. No. 4127. N. Y. Co. Clk. No. 1064, Reg. No. 2 C 618. Kings Co. Clk. No. 220, Reg. No. 2384. Commission expires March 30, 1942.

[Seal.]

[fol. 1629] [File endorsement omitted.]

Endorsed on cover: Enter William J. Hotz, File No. 44,661, Nebraska, D. C. U. S., Term No. 312. Harry R. Swanson, as Secretary of State of Nebraska, et al., Appellants, vs. Gene Buck, Individually and as President of the American Society of Composers, Authors and Publishers, et al. Filed August 6, 1940. Term No. 312 O. T. 1940.